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ART. 1.—*Minute of Governor-General of India on Municipal Government, August*, 1864.

AMONG the many *nostra*, which State quacks have suggested for the cure of the evils of the Anglo-Indian system of Government, none appear more plausible and more reasonable than the application to India of the time-honoured institution of unpaid and honorary Magistrates. The question really cuts deep into the foundations of Government, and touches the secret springs of the art of subordinating the many to the few in the interest of all, which is called Civil Rule. The subject has, however, been handled very superficially: the measure has a very liberal exterior, and is very easily brought into a nominal existence, and thus it has obtained favor in many quarters, and support from many men. As one of the phenomena of the times, though not likely to outlive the decade, it deserves at our hands a careful examination.

The Anglo-Indian Government has always set up the character of being conducted on the highest principles—that is to say, for the benefit of the people—the mass of our subjects. In spite of the abuse and contempt which have been lavished upon the grand old Regulations of Lord Cornwallis, no unprejudiced reader can rise from their perusal without a high idea of the benevolence and wisdom which dictated them. A great contrast is in this respect presented by the avowed principles and practice of the Dutch Government of Java, a Government essentially on low principles, under which the people went absolutely for nothing, and the energy of the rulers was directed to the expansion of a culture to benefit European speculators, and the shareholders a Home Company. So deeply engraved

in the spirit and consciences of the servants of the old Anglo-Indian Government is the feeling, that the rule of the English can only exist, if it tend to the benefit of India, that it is to that instinct that we trace the otherwise unnatural resistance, offered by the public servants of an English Government to the English settlers, towards whom sympathy of education, country, and religion, would naturally have attracted them.

Another feature of the Anglo-Indian system was the entire absence of the aristocratic element which exerts so powerful an influence in the mother-country. A proper subordination of rank to rank, and grade to grade, in the official hierarchy, was found to co-exist without difficulty with a complete sense of equality of man with man. Every Englishman considered himself as good as any other Englishman. Even a wider phraseology has been assumed, and the whole community has been grouped upon a European platfrom. It is only with difficulty that the social distinctions of the educated and the gentle are maintained, and the distinction between classes is scarcely observed in a community, where every one considers himself just as good as his neighbour, and finding it convenient to ignore his own antecedents, spares himself the trouble of inquiry as to the birth and education of any one else. The same principle has been extended to natives, and the vulgar theory, that one black man is as good as any other black man, has often been offensively and practically acted upon. Indeed, one of the complaints made by the better classes on the conquest of any new province, is that the English try to be just to all, but make no distinction of persons. The civilly disposed foreigner treats noble and peasant with the same civility, and the man of loose speech and unrestrained hands, treats all classes with the same want of sympathy, and with the same disregard.

Till within a few years the idea of associating unpaid and honorary agents in the State machinery of Government never entered into the heads of any one, and when the convulsion caused by the Mutiny suggested the expediency and necessity of giving the upper classes some interest in the maintenance of British rule, the idea was in some provinces coldly received, in others it was so rashly worked out that the experiment has signally failed, and a reform, the germ of which was healthy, has become an object of ridicule from the folly of those who hastily adopted it.

Emphatically, in India we sit upon a volcano. We neither know, nor do we seem to care, in which direction the next eruption of compressed force will take place: that it will

take place before long, there is no doubt. Some sudden spark may set a kingdom on a blaze, and if a European war were raging at the same time, we should be quite unable to cope with difficulties on a grand scale. All the plaster of European civilization will then fall off, and we shall find ourselves in a struggle with races, of whose aspirations, and of whose genius we are utterly ignorant. This is the vice of our centralizing and delocalizing system.

The Turkish Government have adopted, in their system of managing conquered provinces, entirely opposite principles. Instead of being rendered subject to all the laws of their Mohamedan conquerors, the Christian communities are allowed to govern themselves, and have no relations to the State, except that of paying tribute, and supplying soldiers. Although these communities are not safe from lawless acts of tyranny, and are reminded from time to time that they are a conquered people, yet they are never interfered with as the citizens of European states are, for the sake of uniformity and good government. Most of their institutions and laws are so completely their own, and administered by themselves, that they might almost be said to form independent republics in the midst of a Military Empire. Moreover, the Heads of each nationality are in the pay of the Government, and find their own interest and their own dignity in maintaining the existing state of affairs, and under ordinary circumstances would be the first to convey intelligence of an impending storm. Such a system of rule is incompatible with the high notions of a Christian Government, which looks upon subject nations as solemn trusts committed to their charge in the great interests of humanity.

Is there, then, no way, in which the people of India can be employed to their own profit in the task of self-government? Are there no details of the executive and judicial machine, which can safely be trusted to honorary agency? Can no assistance be derived from the general public? Much every way, but that assistance must be sought for in a manner suitable to the habits of the people, and in a mode which harmonizes with those institutions which we introduced, and to those principles of good government which we cannot as Christians abandon. We proceed to enumarate them.—

I. Municipal organizations for executive duties.
II. City and rural Councils for the expression of opinions, and representation of grievances.
III. Honorary Police Officers.
IV. Arbitrators under the guidance of Civil Court and Jurors.

V. Assessors in criminal trials.
VI. Jurors for discovery of local customs, or definement of landmarks.
VII. Tribunals of Commerce.
VIII. Honorary Boards of City Magistrates.
IX. Honorary Registrars of Deeds.
X. Councils for adjudication of trade disputes.
XI. Councils of conciliation in family quarrels.

It must be remembered, that in India there are no educated classes living on the capital realized by their ancestors. The service of the Government is the aspiration of the educated classes, and the remainder live by petty trades and manufactures, or by agriculture. It is true that every one seems to find unlimited leisure for holidays and pilgrimages, but this arises from the uneconomic distribution of labour, and the fact that at least three men are found doing the work which might be well done by one. The more wealthy classes are generally very luxurious and very lazy, and, as a rule, entirely devoid of public spirit. Power, if desired at all, is coveted as an instrument of oppression, an engine of revenge, or a means of unlawful gain. It must also not be forgotten, that in India race has trodden out or rather trodden down race, religion has jostled with religion, and the community itself, like the language which they use, and the dress which they wear, is made up of heterogeneous elements, which no time or art ever will weld or fuse together. Thus, in any attempt to make use of the people, we are met with irreconcilable claims of dignity, and inextinguishable animosities and contentions. A new element of discord is flung into a family by the unexpected and uncoveted elevation of one member to an unsuitable dignity, leading to false accusations, bribery, anonymous petitions, and even midnight assassinations. The gaols of some districts hold prisoners who might never have erred but for this additional poison introduced into the body corporate.

We proceed now to notice in detail the functions which may be entrusted to honorary agents.

I. Municipalities.—In every city or town there is the germ of this organization, which has only to be regulated and developed. We must neither be deceived by the snare of the reformed corporations of England, or the degraded shadow which has been allowed to survive in such countries as Turkey. It has been remarked by a writer well acquainted with the subject, that the municipal institutions of these countries amounted to little more than an arrangement for facilitating the collection of the taxes. Fiscal convenience was the end and object of the

institution. Each district or town was assessed to pay a certain amount, and the re-partition of that was left to the Municipality. The system was, therefore, too intimately connected with a bad system of taxation to become the means of training a nation to freedom and justice. The alien ruler allied himself with the chief people in a league of plunder of the poorer classes. We must start therefore on the basis, that the Municipality have nothing to do with *Imperial taxation, or the administration of justice.* Nor should the absurdity be perpetuated of universal suffrage. If ever there was a measure likely to ruin the peace of an oriental town, it is this. The principle should be that of selection by the Government of a limited number, with reference to the peculiar size and constitution of the community for a fixed period. No hereditary claim should be admitted. The members must be of good character and repute, in full possession of their faculties, resident, and in tolerable circumstances. Their duties should be to provide for the conservancy of the town, and be the mouth-piece and representative of their fellow-citizens. Byelaws for their guidance should be drawn up, steering clear of the two rocks of slavish subservience to the officials of Government and complete independence. Gradually, as the art of self-government is learnt, and liberty is distinguished from licence, the reins should be relaxed, and the influence of the local officer be felt more by advice than by orders, and in this way the next generation may be trained.

By such a Municipality would be arranged the form which local taxation is to assume, and the mode of collection: penalties would be enforced on their prosecution. The assessments for the Municipal Police being a contribution to the Police fund of the province, must be fixed for the year in consultation with the officer of Government, but the remainder should be spent at the discretion of the committee subject to a formal audit and report. Conservancy, improvement, and ornamentation of streets, erection of public buildings, and the numerous petty details which vex the hearts of Magistrates, should be made over to the Municipal body, who will communicate freely but demi-officially with the Magistrate, upon whose intelligence, forbearance, and knowledge of mankind, much will depend. Unless there are funds to spend, such a body is not required. If they are properly contributed, the members should be allowed free scope to work, and not be crushed, or humiliated. At the same time there should be no plundering, no civil jobbing, no oppression of the lower classes, and, if the lethargy of the upper classes induce a stagnation, the officers of Government

must resume those powers, which were delegated neither to be abused, nor to be neglected.

II. But another and more crying want will be supplied by such Municipalities. As already remarked, we daily walk upon volcanoes: we neither know the feelings of the subject millions nor do we care. It would be ludicrous, if it were not dangerous, to read the reports of some district officers vouching for the opinions of the hundreds of thousands whom he is supposed to represent. Round each European community, like flies round the honeypot, flutter and bask a few select sycophants and toadies, who represent, to the official eye, the general Public. As well-dressed natives, with a conventional fawn and flatter, they get access to the ruler, to urge their own or their neighbour's cases. At odd times, they feel the direction in which the Court wind blows, and trim their sails accordingly. Thus are accounted for the inconsistent opinions fowarded at different times from the same locality, being the reflection of the same thing through different coloured glasses. Moreover, there are subjects on which the best natives would give wrong opinions, or partial opinions. Let us reflect on the suggestions with regard to polygamy, divorce, or the treatment of women, which a Mahomedan deputy-collector of lax morality would tender, or the advice with regard to rent rates, which would be gleaned from a council of landowners. The only remedy to this evil is to hold periodical city and penal councils in each district, for the expression of opinions, and the representation of grievances. The city and town Municipalities and the village Headmen, as legally constituted, should be convened annually, and oftener if required. There is the common council of the district, or sub-division of district. The new measure should be propounded and explained. The secret grievance, long gnawing the vitals of the community, would there be boldly spoken out, or guessed from the murmurings. The corrupt official would there, by general acclamation, be denounced, many a mistaken idea would be removed both on the side of the governors and the governed, and even where we could not concede a cherished wish, or yield to a deep-rooted antipathy, still we could explain our motives, and ask for toleration to a measure in which concurrence is hopeless.

III. We now pass to the honorary police officer. The organization of the police has been of one great, though indirect, advantage, in that it has drawn a distinct line of severance between the executive police duties of the public prosecutor and the judicial duties of the Magistrate or Judge. They were too much blended in old times, although essentially different. It is the duty of the policeman to take *passive* cognizance of every

offence, and to report it in the diary, and to take active cognizance of certain offences, in which the State, as the representative of society, determines to prosecute. So also it is the duty of the general public to give information to the police of the occurrence of certain offences, and to assist the police under all circumstances. Then it often happens, that the people have the knowledge without the power or inclination to act, while the police who have the power are deficient in knowledge. Moreover, under the new procedure the proceedings of the police are brief and simple: he records no deposition, and hazards no opinion as to the guilt of the offender. The chief qualifications of a police officer are honesty, intelligence, and local knowledge, and these are often found in the person of the 'Rural Notable,' who is to be met with in every district, though under different designations. He is one of the people, but slightly in advance of his neighbours. Under the old regime he occupied a position of considerable importance, which he often abused, but under our levelling system he has been reduced below what is his due, and has lost a sphere of great usefulness. Such an individual vested with police powers and remunerated by an annual payment, supplies the hiatus, which yawns between the stipendiary police and the people. Nothing escapes his ken, and the real history of each mysterious occurrence, which baffles the alien detective, cannot long escape the influential denizen with his secret channels of information. We are, therefore, strongly in favour of this measure, but the selection must be cautious. If the class of men do not exist they cannot be created. Where they do exist, the precise duties must be explained. They must know what they may, or may not, do, and they must be carefully watched and loyally supported by the district officer. The snare must be avoided of attempting to encourage a cheap police in this way. It is not economy, but efficiency, which is sought for by the measure: a wise forbearance should be exercised, and technical errors be overlooked, if essential justice has been done.

IV. Arbitration has always been had recourse to in our Civil Courts, and provision is made to remunerate the arbitrators who are withdrawn from their proper duties. Under a native rule this is the only machinery for the adjudication of disputes: under our own rule it is a very favorite one, but when the court undertakes to execute the award of arbitrators, it must have some guarantee for the correctness of the decisions. The evil repute which has attached to this mode of employing honorary agents, has arisen from the unskilful and careless handling of arbitrators by judicial officers. It is not enough to make over the case to parties whose names are suggested by the litigants, but

the issues must be carefully drawn, and the matter to be disposed of by the arbitrators must be set before them distinctly, and they must understand that beyond these points they must not go, and that their award must be so framed as to be capable of execution by the Court. With these precautions their awards should be final, except on proof of corruption or mis-direction. The greatest care should be taken to relieve the arbitrators from the irksomeness of long journeys and long delays, and the services of the same persons should not be repeatedly pressed; and never should distinguished, and respectable individuals be called upon to arbitrate in the petty concerns of their humbler neighbours.

V. As Assessors and Jurors in criminal cases, the better classes can be employed with great advantage to themselves and to the cause of justice. By the Code of Criminal Procedure provisons have been made, and one or other of these two alternatives must be adopted by every Sessions Judge. When jurors are made use of, their verdict is final, and here is the difficulty. Grave doubts are entertained of the entire suitability of juries, even where centuries and generations have made them part of our common law and common life; but the people of this country are timid, ignorant, and superstitious, and when juries are employed, we must take account for the escape of many an undoubted offender. With assessors there is not the same risk. When well-handled by the presiding Judge they form an important link between the witnesses and the Judge, the interpreters of many an imperfectly understood phrase, the suggesters of many a clinching question. The greatest pains should be taken to prevent their labors becoming irksome to juror or assessor, and some remuneration should be given, when real loss has been incurred. As a rule, the natives of this country can always find leisure for a holiday or a wedding, and should be taught that every good citizen must serve his country.

VI. Jurors to be convened occasionally for other purposes, and the discharge of duties, which no one but themselves can adequately perform. When a local custom has to be discovered, or a family or tribal law has to be placed beyond doubt, this can only be effected by the convening of the notables of the neighbourhood in sufficient number as to secure notoriety, knowledge, and impartiality.

VII. We pass now to Tribunals of Commerce. In no particular does the type of an ancient civilization appear more conspicious than in the mercantile relations of the people of India. Principles of book-keeping, laws of bankruptcy, partnership, and agency, a boundless system of credit and exchange, force themselves on the notice of the officer charged with the trial of

civil suits. It is much doubted whether intricate cases involving questions of mercantile law are disposed of in a manner that is creditable to the Judge, or satisfactory to the parties. Often cases are kept back from the courts, and attempts made to work out a private compromise. It is, therefore, most expedient that Tribunals of Commerce should be constituted in all marts and entrepôts of commerce. A list of notable citizens of unblemished commercial reputation should be prepared, and a certain number each year should form the Tribunal, which should act in concert with the Civil Judge of the city without any independent jurisdiction. For instance, when a suit has been lodged in the Court, the issues should be carefully drawn, and the case then made over to the Tribunal, who would forward their award to the Court to be embodied into a decree: thus, the advantage of local knowledge and judicial exactness would be combined. Where the unpaid agent fails, is in want of system and exactness,—where the paid Judge fails, is in want of local knowledge and patience in unravelling complicated accounts.

VIII. Against any employment of individuals as Honorary Magistrates, and Honorary Civil Judges, we protest. The absurdities which have been perpetrated in this direction during the last seven years baffle all description. There is something on the first blush of the scheme so liberal, so practical, so English-like: visions are called up of the country Squire, not that he has always proved impeccable when the case before him involved the atrocious crime of poaching. But ever since the time that Lord Canning, himself sprung from the people, went in for aristocratic principles, the cry has been taken up by many popularity hunting politicians, who in their own country would be democrats. Thus, it has happened that in the Punjab and Oude, the wolves have been formally vested with judicial power over the sheep, and many a Jagheerdar and Talooquhdar, who had a few years before been shorn of powers to injure, which he had abused, found himself legally vested with powers Criminal, Civil, and (Heaven save the mark!) Revenue, over the unfortunate people, who by their ill-luck fell under his black shadow. The time may come when both the classes, above alluded to, may be extinct. If it be asked what is the difference between a Jagheerdar and a Talooquhdar, it may be replied that it is something like the difference betwixt a crocodile and an alligator, the same ravenous power, but a slightly different snout and a differently shaped, though equally capacious, jaw and belly. *Alieni appetens sui profusus*, is the motto of this class. They are ignorant, selfish, indolent, and have not any qualification for the distribu-

justice, which, if done at all, is done by corrupt underlings. Yet while the greatest pains were being taken to improve the administration of justice, by the examination of Government servants, and the introduction of codes of law, at the same time these savages were introduced, and jurisdictions formed for their amusement, or gratification, or glorification. So over-sanguine were the partizans of this measure that in the reports of a province, famous for fulsome praise, we find that an actual change in the appearance of the people owing to this measure, is vouched for as visible to the naked eye. One native Magistrate is praised for the efficient discharge of his duties during a period, at the close of which he had not actually been invested. One kindly old Honorary Civil Magistrate at a loss how to decide a civil suit, ordered a decree for the plaintiff, and an order on his own treasurer to reimburse the defendant. Everything was gradually becoming 'Honorary' up to the time of the advent of the present Viceroy, an officer of very different experiences and sentiments. We believe that the tide turned, just when Honorary School Masters were about to be appointed. The next step would have been Honorary Surgeons and Vaccinators. The extreme left of this school proposed something like the abolition of all fixed tribunals, and the substitution of migratory Courts composed of white-robed agriculturists convened under shady groves to sweep up the petty disputes of the vicinage, and pass on. Common sense and a sense of ridicule triumphed, and these schemes have been abandoned. Some of these honorary officials died, some were dismissed for gross misconduct, or for political misdemeanor, and we understand that the number will not be added to. We heard the other day an axiom laid down, that all the loud-mouthed champions of injured Rajahs, the men who write little volumes in defence of native States, and in abuse of British Governments, invariably are found to have native domestic ties. We cannot vouch for this by an exhaustive examination of such brochures, but we can lay down another axiom, that the advocates of these wild schemes of honorary agencies, and making over to the people to do gratuitously work for the performance of which they are highly paid themselves, are generally busy triflers, with vast arrears of business which they ought to have got through.

The truth seems to be that so long as we collect the revenue of the country, we are bound to provide the best machinery for the administration of justice that is available; we are bound to seek out, and train in our schools and colleges, natives of good family, [illegible]tion, and good repute, to pay them well, treat them [illegible]hem well, give them a good day's wages for a

good day's work, receive them with honour and respect, and excite them to secure a good name among their fellow-countrymen. Unpaid labour is notoriously bad labour; unskilled labour is notoriously bad labour also. It is idle to suppose that it takes years to qualify a man to be a surgeon, or a school master, and that any one is good enough to dispense justice. How little they know of the difficulty, who say so! Honest men have openly declined to undertake honorary duties, which must, if properly discharged, occupy a great deal of their time. Dishonest men will jump at such duties from the indirect advantages, especially as regards coercing or frightening the agriculturists, which they anticipate. We trust that this policy has worked itself out, never again to be had recourse to.

These remarks apply to the rural jurisdictions which have been carried out in the interests of districts for the express benefit of particular individuals, without the least consideration for judicial fitness. In cities and towns, however, there are sometimes found men of respectability and education, who, having retired from active business, are not unwilling to lend themselves to the service of Government, and constitute a Board of Magistrates for the disposal of petty cases. Their numbers secure honesty, the immediate presence of the Magistrate prevents abuse of power: the residence in cities guarantees a certain degree of education, respectability, and character. This measure differs *in toto* from the vesting a single ignorant jungle savage with power, at a distance from control, over the very people who require being protected from him.

IX. The idea of an Honorary Registrarship of Deeds has been suggested, but it appears to be just one of these duties which should be entrusted to a paid agency only, because unless honesty and accuracy are secured, the object of registration is lost, and the dispute is transferred from the question of the truth of the transaction to the correctness of the register. It is a mistake to suppose that in any part of the world people will be found to discharge any routine duty for strangers gratuitously. The Honorary Registrar would certainly, before very long, require an unauthorized remuneration to induce him to discharge his duties. Why not allow him fees at once? Then if fees are allowed, there is no difference between him and any other stipendiary. If the real meaning of the movement be to induce respectable members of the non-official classes to undertake the duties of Registrar on the authorized remuneration, there can be no objection, but such an employment is not honorary.

X. A Court of Industrial Judges, or, in other words, a Council for the adjudication of trade disputes should be established in every large manufacturing town, to assist the Civil Judge in settling disputes betwixt workmen and masters. A difference composed by advice is better than a strife decided by a judgment. The Council should be elective, and composed of masters and workmen, and formed of two chambers. The former should assemble in private for the purpose of conciliation, and the latter in public to adjudicate in those cases where the friendly attempts of the first chamber have failed. It often happens that disputes with regard to wages or apprentices arise, which are entirely unintelligible to the ordinary Court, but which are capable of easy solution if brought before such a tribunal as we now propose.

XI. Councils of conciliation for family quarrels.

We cannot do better than quote an extract from an article, published in this country many years ago, and which fully describes the advantage and object of the Family Council.

'Numerous are the cases of discord in a family, which shall 'never see the light, but which, under the unfeeling policy of 'the Anglo-Indian Courts, are brought at once into the broad 'glare of the Court amidst the shame of the litigants, and the 'derision of the bystanders. Numerous are the cases of doubt 'and difficulty, especially in the family of the widow, the minor, 'and the issue of double or ill-assorted marriages, where the 'voice of legitimate authority is required to compose the strife, 'and arrange for the future. The sudden death of the head 'of the house sets rival wives, the mothers of rival families by 'the ears. Step-son is rancorous against step-mother. Each 'demands more, and gets less than his own right. The village 'or quarter of the town is scandalized at the curtain being 'raised, that screened the privacy of a respectable citizen, 'whose body, if a Mohamedan, is still feasting the jackals in 'adjoining cemetery, or whose ashes, if a Hindoo, are still tied 'up in a napkin, preparatory to their transport to the Ganges. 'Respectable men with tears in their eyes have sought the 'advice of the English Judge in such hard cases, and sought 'it in vain. There is no alternative betwixt dragging into Court 'the wife of their father, or submitting to be deprived of the 'jewels and paraphernalia of their own deceased mother. The 'accounts of the firm have to be laid open in full Court before 'f-brothers can relax the gripe on each other's throat, which 'mmenced on the death of their parent. The minor is plun- 'want of system in his household. No dowry is forth- 'the orphan girl. For the settlement of such difficultes

'the admirable institution of Family Council presents a ready 'remedy. Composed of the agnates and cognates of the family, 'it should be convened by the Judge. All attempts to deceive 'them will fall through: ordinarily they will have the credit at 'heart, and even supposing that they could not get the litigants to 'agree to their award, still their recorded opinion of what is right, 'and their discovery of the value of the property, will furnish 'the regular Courts with materials for a sage decree.'

There may be other occasions on which the assistance of the people may be solicited and obtained in the management of civil affairs: but it must always be in subordination to the constituted tribunals, and acting as an auxiliary, and not as an independent agency. We do not say that as the people are habituated to self-government, they may not be entrusted with larger powers. We see with satisfaction that natives are members of the Council of the provinces, and of the Council of the Empire. We are glad to hear of their forming themselves into associations, and assembling to discuss political questions. We are glad to hear of their establishing organs of public opinion, and availing themselves of all the constitutional methods of influencing, checking, and advising the Government. We rejoice to see them in high office, members of the highest Court of Judicature, and filling numerous stipendiary offices in every part of the Empire. What we object to is the tempting them by sinister motives to discharge the sacred duties of a Judge gratuitously. It is officially reported that one Honorary Judge does not like the trouble of deciding civil suits: he does not object to decide of revenue cases: probably he is a party concerned in them. Analyse the motives of any one of the petty chiefs, whom impulsive Governors have turned into Magistrates, Civil Judges, and Police officers, and they may be generally reduced to a wish to increase their own importance and feather their own nests.

We have the liveliest sympathy with the unrepresented people of India, scattered in their thousands of villages, congregated in their hundreds of towns. Many of the servants of Government, belonging to a school now dying out, have spent years among this people, and learnt to love and respect them: they have no horses or elephants to lend to the Englishman, no banquets or *nautches* to invite them to, they make no great show at a Durbar, but they are the people, whose interests should be dear to us. Our heart's desire is to see them educated and elevated, and in due time they will see many things more clearly than they do now. But the improvement must be upwards. With the hereditary scoundrel, who, gross, vicious, cowardly, ignorant, selfish, pitiless, places his bloated person betwixt the Government

and the people, we wish to have nothing to do. In times past he may have had his use, but the present belongs to the industrious agriculturist, the enterprizing merchant, the men of education, and the men of character.

ART. II.—1 *Report on the Administration of Civil Justice in the Punjab, for* 1864.

2. *Punjab Civil Code. Part II on Procedure.*

3. *Act XIX of* 1865 *(Punjab Court's Act.)*

THREE thousand years have now passed away since King Solomon wrote, as the sum of his experience of all earthly transactions, 'there is no new thing under the sun.' Although since then, the progress of the world in discoveries, both of practical and theoretical import, has been extraordinary beyond all calculation, and therefore in one sense we are ready to deny the proposition; yet in another sense we are bound to admit that it is as true as ever. Our life, modified indeed by the ever progressive changes of the civilized world, but still unaltered in its essential characteristics, runs on from year to year just as it did from the first. The topics which we discuss this year, may be new in form, but in their real nature do not differ from the subjects on which we dilated long ago;—senates meet, debate, and are dissolved, and we review their labours or criticise their errors; great men die and we write their epitaphs; new men come forward and we prophesy their career; and thus we do from day to day, not from year to year,—there is no new thing under the Sun.

Of no place in the world can this be said with more truth than India, and that notwithstanding the real and constant progress of the country, and the gradual development of its resources, which is steadily being accomplished, our duties, our troubles, our amusements, all recur with constant sameness. The daily journals score up anew the same kind of subjects; the season's ball, the hunting party, the station scandal, and the reported law case, again and again fill the columns, and we sigh for something new.

Our present subject forms no exception, for our reflections are excited by the perusal of one of those ever recurring publications, an 'Annual Report on Civil Justice'. Day by day our Judges sit, struggling through tangled mazes of lying evidence to find the right and the truth; and year by year their labours are tabulated, digested, and arranged, and then set forth in an 'Annual Report,' pointed with many a sententious paragraph, and adorned, perhaps, with some flourishes of departmental praise, according to the taste of the compiling authority.

The mention of a Civil Justice Report usually suggests no promise of interest for the general reader, and not much greater hope of reward to the philosophic enquirer, who desires to follow the traces of the march of intellect, or note the progress of law and social economy.

We say 'usually', for there are, no doubt, exceptions to the rule. Although it may be true as regards a report from a long established province where law and procedure are now very much what they were years ago; yet it cannot always be accepted as true when the report treats of the progress of a recently organized province which is in all the vigour of growth, and where law is being introduced step by step, so that its effect on the population may be traced from year to year. Even should the report of such province be deficient in ability of writing, or feeble in its generalizations and reasonings from observed premises, still its mere statistics have an interest peculiarly their own, and which will reward a patient examination.

Of all such provinces the Punjab is, perhaps, the most noteworthy. It is more advanced than the Central provinces, and others similarly situated; it has passed through more striking vicissitudes, and has been the object of more concentrated efforts of both physical and moral energy; while at the same time, the great variety of character, habit, and manner, observable among the many races that are to be met with in its social districts, affords wide scope for the study of the progress of social economy, and for the effects which British law and British civilization are producing on the wholely different classes, which together make up the population of the province. Nor is this the only plea we can offer for drawing the attention of our readers to the affairs of the Punjab. The public eye has, by the mere force of circumstances, and ruled by argument or the voice of the public press, been constantly attracted to the frontier province of our Eastern Empire, ever since the time when first the flower of Sikh chivalry gallantly but vainly strove against British power, till now when exhibitions of art and manufactures are the order of the day, and the descendants of Sikh chiefs and Mahomadan princes are administering the internal economy of their own cities, and even dispensing justice to their own people, guided by English law and a reasonable procedure, while peace and harmony reign over all the provinces from the Indus to the rich plains of the Sutlej and Beas.

The Punjab has been the scene of so many stirring events, and has been the field of so many experiments, if we may so call them, in administrative Government, that all classes of mind [illegible] with instinctive interest.

Situated in the frontier of our Empire, surrounded, and partly inhabited, by wild and lawless tribes, it has ever been regarded both in a military and political point of view, as a province of almost incalculable importance. A campaign on the Punjab frontier excites more anxiety and interest than many an event of much greater magnitude in Hindustan proper; the skill and care too, that have been brought to bear on our dealings with the frontier tribes and neighbouring powers, must be admitted, even by those who do not approve the principles on which we have acted, to surpass in vigour of execution, and skill of management, almost anything they have witnessed in our relations with other states.

Physically and historically too, the province has always been a centre of interest. The archæologist traces with new delight the footsteps of the Greek invaders, whose relics in the shape of coins and carvings are to be found in various parts of the country. Every one of the five rivers is classic ground; and the northern frontier abounds with relics of an art that has long since passed away,—sculptured forms whose delicacy of workmanship, beauty of detail, and dignity of design may well excite the admiration even of the artists of the nineteenth century.

Not less remarkable are the natural features of the province. The botany of the Himalaya, with the curious study of climatic changes that belongs to it, the opportunities afforded for the comparison of its flora with those of similar elevations in other latitudes, and the experiments that have been made in introducing and acclimatizing valuable plants, tea, cinchona, hops, and many others, have all furnished an inexhaustible fund of interest to the scientific or economic investigator.

For geological studies there is, perhaps, no province in the world which presents more striking opportunities. In the Himalaya the primary and metamorphic strata are developed with a grandeur that fills the mind with awe, while lower down the beds of the Suvalik range have thrown a marvellous light on the study of tertiary strata, and the fauna belonging to that period. Besides all this, useful mineral products are to be obtained in various parts of the Punjab mountain-tracts;—the purest rock salt, the finest iron, alum, borax, sulphur, petroleum, and even coal,—all come from the Punjab, and in the case of some of these products the rest of Hindustan is supplied from its markets.

But apart from all the interest that the natural aspect of the province is calculated to excite, there has been yet a greater source of interest, and that is the remarkable history of its conquest, its progress, and gradual settlement, together with

the history of the career of the men by whom these changes were effected. That keener interest should be felt in subjects like these, is not wonderful, for such an interest is at once more natural, and also one which can be felt by a far larger class of observers. As men, we naturally take more interest in the acts of men than in the study of rocks, or in the search for remains of Greek civilization: all classes listen with delight to the recital of the exploits of British arms, while comparatively few care about Suvalik fossils or Himalayan flora.

The career of the British in the Punjab, especially when seen through the golden haze of the past, which hides many features and defects while it dims not the lustre of brilliant acts, is one most flattering to our nation. The conquests of the province, effected, after two arduous wars, against an enemy which met our onslaught as few have ever met it before or since, is one of the greatest triumphs in the history of British India; and it is impossible to review, without sympathy and pride, the progress of those efforts at good government, which ended in the complete re-organization of the country. We still read with eager interest, how skilfully Henry Lawrence guided the delicate politics of the Residency days, how earnestly John Lawrence toiled, nor spared himself for rest or recreation; how, when difficulties gathered thick and dark, and the second war was imminent, every man, soldier, or civilian was at his post; how Vans Agnew suffered, and how Edwardes and Lake fought before the walls of the guilty city of his murderers; and how when the last war was over, the Board of Adminstration was organized, and systematic Government begun, how Commissioners supervised, and Settlement Officers toiled, till the Revenue and Judicial systems were reduced almost to their present forms.

The officers who have worked in the Punjab, are, in truth, just the kind of men who cannot fail to attract public sympathy. They were not great statesmen, they were not profound lawyers, but they were gallant soldiers—hard working, steady men, whom difficulties could not daunt, no hardships overcome. They went about among the people, they decided cases on the spot with a procedure highly shocking, indeed, to the learned Counsel of the Inns of Court, but admirably suited to the time and to the people, and which was even refined and formal when compared to what had been in use before its introduction. If a crisis came, the energies of such men were at once called forth. In the hour of danger, in situations of unparalleled difficulty, they exhibited a skill in planning, and a courage in acting, which was at once the wonder of their enemies, and the glory of their countrymen.

The days, indeed, of those troubles have now passed away; green fields and golden crops are now thriving over plains that were once red with the carnage of battle; but the old spirit of the Punjab has not died out. If ever the storm should gather again, no doubt there will be found men to face it as bravely and as skilfully as ever; we must remember also, that days of peace and progress demand no less ability of head and hand for good management; that in Civil Government difficulties arise and dangers beset, the conquest of which is no less a real triumph than the more brilliant victory of a battle field.

To the fame of the Punjab and its officers there are, no doubt, many detractors; men who sneer at Punjab reputation, and talk with many a contemptuous phrase of non-regulation provinces, of soldier-judges, and of magistrates who work in their shirt sleeves; of courts without barristers, and benches without legal formalities; but the very fact of the existence of such a class proves conclusively how wide-spread and sounding a name the Punjab has obtained.

We do not write for the purpose of exalting the Punjab, or panegyrizing the officers by whose labor it was conquered, settled, and ruled. Fortunately, such men need no encomiums; they stand on their own merits: we write simply to call attention to the singular interest which attaches to a study of the progress of the province, and also to show how excellent in all its essentials is the system of administration, which has hitherto been pursued in the Punjab, while at the same time we wish to shew what improvements are wanted to make it better still; above all, we write to expose the error of that ultra-conservative spirit which would restrain such progress, and would debar the province from the benefits of the improved laws and procedure that have been devised since its establishment, and are only waiting till energy and discretion shall put them into operation.

When we address ourselves to the study of the state of civil justice in the year 1864, we have to bear in mind that the province has now been fairly under British rule for fifteen years. We purposely omit from the calculation the previous years during which an attempt was made to govern the country under the nominal authority of the Sikh Durbar. Such a period can hardly be counted as a portion of our present systematic rule. We do not intend for one moment to deny that much improvement was effected during those years, by the earnest labour of that great and good man Sir Henry Lawrence, and by the officers who helped him in working out his

wise and well-matured plans and principles. We cannot tell how far our present success may be due to the unceasing care and unrelenting labor, which prepared the soil for the growth that was to follow. We must ever remember that the first benefits of British justice, and the first blessings of a fair and equitable settlement of land revenue, were given to the people of the Punjab under the direction of Henry Lawrence, long before the faithlessness and corruption of the Sikh Government forced upon us the second war, and the permanent annexation which followed it.

We cannot but pause to contemplate with gratitude and pride the memory of him who was the father of all progress in the Punjab; whose name has passed away all too soon from the annals of the land for whose good he spent the energies of a life-time, and the lustre of whose name from the day when he was taken from the province, has passed to those who deserved it less, and who took his place, because they could follow out a theory which the mind of Henry Lawrence, honest as such great minds always are, could not agree to.

Notwithstanding, however, the eminent value of the preliminary labors of British officers during the days of the Residency, and of the three years which preceded the establishment of the Board of Administration, we cannot fairly speak of the actual commencement of our judicial system before the appointment of the courts of Civil justice, and the promulgation of these principles of Civil Law, which were to guide them in hearing and deciding suits. These were entirely the work of the Board. They arrayed the courts in several grades, much in the same manner as they are constituted at the present time. They made each court subordinate for the purposes of revision and appeal to the one above it, giving the upper courts power to revise and modify the orders of the lower ones, even though no regular appeal was presented; and this system of gradation prevails still, and has now been stereotyped by Act XIX of 1865. Such a system was eminently necessary for a province in which, at its first establishment, a number of officers, military and civil, without any special judicial training, were called on to hear and decide civil suits. Every one had to learn: in the course of the process many blunders were made and many points overlooked; hence it was impossible to render the orders of all grades of courts final.

The officers, who sat in the superior Courts, were, or were expected to be, men who had always great experience of work, if not legal knowledge and ability. To these alone could the giving of the final order be entrusted. The excessive wideness

of appellate jurisdiction, and the extreme freedom with which appeals are allowed even beyond the legally fixed period of limitation, should always be curtailed as soon as the body of judicial officers in any province has attained a practical knowledge of the work before it, and as soon as the courts present a regular aspect. Such curtailment has, no doubt, taken place to some extent in the Punjab; we think, however, that the facilities of appeal are still practically too great; but we shall revert to the subject of appellate courts presently. The courts of original jurisdiction are guided in questions of law by the provisions of a treatise called 'Principles of Civil Law,' which was prepared under the sanction of the Board by Mr. Temple, under the direction of the then Judicial Commissioner, Mr. Robert Montgomery. This code was approved by the Governor General in Council, and has the force of law under the provisions of the Statute 21 and 22, Victoria Cap 106. It would be foreign to our subject to enter on a discussion of the merits of the work; suffice it to say that it is and professes to be nothing more than an elementary treatise, setting forth those plain and important principles which are the groundwork of law. A knowledge of these principles was considered sufficient for officers deciding the disputes of a simple and rustic population in which points of law rarely arose, and the decision of which was generally to be effected by the exercise of common sense, together with patience and care in ascertaining facts.

It must be admitted however, that since the first promulgation of the Punjab Code, the country has undergone much change. Commerce has been developed enormously; and, as a natural result, a new class of cases has arisen which are much more difficult to decide, and in which nice questions of contract law, of limitations of exchange laws, and the like, not unfrequently arise. This class of cases has been further augmented by the spread of European trade, and by the establishment of merchants, public companies, and trading firms, in the Punjab.

The increase in the more difficult suits has, no doubt, chiefly taken place in the large cities. Although the average value of suits in such places does not (except in the case of Delhi) show much above the average of other districts, this result is partly due to the still large majority of small parole and bonded debt cases; and the fusion of all into one general average almost precludes the possibility of a just inference; but practically there can be no doubt that there is far more legal knowledge required in the courts having jurisdiction in large cities and stations, than in those situate in purely rural and remote districts. It is, therefore, important (and this is generally

attended to by Government) that the best legally qualified officers should be located in those places.* In cities too, besides suits pertaining to the mercantile classes, a considerable number of cases of disputed inheritance and succession, and of claims to land within the walls, come up for disposal: they often tax the legal knowledge of the Courts, and frequently demand a considerable knowledge of Hindu and Mahomedan law for their settlement. Still the change has not, on the whole, been so great as to demand an utter renovation of the text books. Notwithstanding the large increase in the numbers of such suits as we have described, the class of simple suits for debt, chiefly between the money lenders and the agriculturists, is largely predominant. In all these, and, indeed, in very many among the more intricate class, the qualities of strong common sense, untiring and determined energy in the ascertainment of the real facts, a good knowledge of the people, their character, their manners, and their language, are possessions far more valuable than legal acumen and technical knowledge.

If any one doubts this, he need only examine a number of the records of carefully decided suits in the Punjab, and he will find that there is scarcely one issue of law drawn to forty of fact.

The result of this is, that the principles of Civil law set forth in 1849 have held their ground till the present day: the requisite additions to them being provided for by the admission of principles of English law, derived from precedent or from the standard authorities in the various branches of legal literature. 'Whenever,' says Mr. Cust, 'the Punjab Civil Code 'speaks clearly on points of substantive law, it is of univer-'sal application without reference to the nationality of the 'litigants, and no foreign law can be imported to over-rule it. 'Whenever the Punjab law is silent, the Judge has then to 'fall back on equity and conscience, and a rule must be 'sought from the two great reservoirs of legal principles—the

* The work of Government in the location of its officers has been not inaptly compared to the work of the artist in Mosaic, who has before him various coloured fragments of marble each of a different hue or shade, but all capable of being fitted into to one part or another of the design, so as to form together a harmonious whole. A Government has under it a number of different officers, each with different mental and physical habits, tastes, powers, and capabilities; the art is to locate each in the position for which he is best fitted, and in which his particular capabilities will be most called into play. The more perfectly Government does this, the better will the province be managed, and especially so in non-regulation territory, where so much depends on individual effort and ability.

'English and Roman laws. Where they agree there can be 'no doubt, where they differ the Judge must decide.' *

Much assistance has been rendered in the study of legal principles by the circulars of the Judicial Commissioners. Some of these are exceedingly valuable. But circulars, it should be remembered, lose their value by being imperfectly circulated, and rarely codified. Every five years at least the circular orders should be arranged, classified, and consolidated, and all the superfluous or cancelled orders removed. The imperfect circulation of these publications, above alluded to, also requires remedy. Instead of printing a sufficient number, and keeping a store of copies, which might be distributed or even sold to applicants, so few are now struck off that there is scarcely a complete set to be found in a district office. The circulars would be gladly purchased by officers collecting sets; † at any rate a sufficient number of copies should be sent to each district to admit of a complete set being put up for the use of each Court sitting therein. At present it is often impossible, without hours of delay, to obtain a given circular, especially if it is not of recent date. But the most absurd plan of all is to publish circulars only in the *Gazette*, without printing them separately at all. Circulars are usually quoted by their serial and general numbers and dates, not according to the date of the *Gazette* they appeared in. It often happens that a circular of June is in a *Gazette* of July, and the student has to take down a whole file, and waste much of his time in searching through page after page, till by some happy chance he hits upon the particular number containing the desired order. There is no index to help him, that does not come out till the close of the year. All this trouble is the result of a silly attempt to save Government a few rupees, the amount of which is absolutely imperceptible in a year's account. When the type is once set up it practically costs no more to print a hundred copies than one. But to return to our immediate subject. The Punjab code, aided when requisite by authorities on English law, and also by the circulars of the Judicial Commissioners, and the published rulings of the High Court of Calcutta, forms a very sufficient reference

* Rulings of the Judicial Commissioners on points of law, referred by Judges of the Small Cause Courts.

† It would be a very good plan if the printing and publication of all circulars were entrusted to some one press or company. It might there be so arranged that officers could, by a yearly payment (just like a subscription to a newspaper), secure for themselves the receipt of a copy of every order immediately on its publication. Every careful officer would be only too glad to pay such a subscription, and thus all expense to Government in printing would be saved.

for questions of law; it is very rarely that a case cannot be met by consulting one or other of the authorities enumerated.

Whether these laws may prove sufficient in years to come remains to be seen, but there is every probability that they will last quite as long as they are required, that is to say, until a great Civil Code shall be promulgated, and certainly if the province goes on progressing at its present rate, it will be quite ripe for the great code whenever it appears.

Still it must be admitted that there are some objections to be urged against the Punjab Civil law. In the first place, it is not good that the Judges should be left to search for rules of law from books each according to his own fancy. It would be much better if the Punjab code were amplified by authority from standard sources, especially in those chapters which deal with the subjects on which questions most often arise, such as contracts, torts, mortgages, or partnerships. We here take occasion to mention the very useful publication of a code, amplified somewhat in the manner described, by Mr. F. R. Scarlett. This book has scarcely received, in the Punjab, the attention it merits. It is of great use to the student, but would be infinitely more valuable if the new matter were more thoroughly incorporated with the old, and the whole published by authority, having, like the original work, the force of law.

Another point to be mentioned is the very unsatisfactory state of the law, as regards those questions in which the *lex loci*, custom, and the principles of Hindu and Mahomedan law, have to be consulted.

In such cases the Punjab code affords the most meagre information. To take, for instance, the case of Hindu inheritance. The code enumerates the first few relations that stand in succession, and then says that it is not necessary to go any further with the list. Now every body knows that sons succeed the father, and so on, and consequently disputes among the near relatives, notoriously entitled to the succession, are extremely rare; as to the mere question of preferential right, it is precisely among the more remote relations that disputes of succession occur, and on these the code is entirely silent. The different schools of Hindû are themselves conflicting on these points, and if the opinion of pundits be taken, it usually happens that no two of them agree, and still oftener there is no pundit in the district really competent to give an opinion at all; those who are referred to frequently quote a number of verses in Sanskrit, which they but imperfectly understand, and which often have nothing whatever to do with the case in question: in fact the pundits quote them merely because they do not like to appear

ignorant of there own ancient literature. Owing to the uncertainty of the law, 'bywustas' and 'fatwas' are frequently taken by courts in the Punjab, although they are illegal and ought not to be, in themselves, the foundation of any judgment. We might multiply instances, both from the Hindu and Mohamedan law, but space forbids us.

In the case of a conflict among the schools of Hindu law, it should be clearly ascertained and authoritatively laid down, that one school or the other, be it the Benares, or Mithila, or any other, is the one which obtains in the Punjab. The provisions of the law could then be clearly ascertained. Another very objectionable feature in the present practice is the excessive facility, with which what is termed 'local custom,' and even family custom (Kúláchár), is allowed to over-ride positive law. That some customs are of wide and, indeed, universal application in the province cannot be denied: such, for instance, are the rules that the daughters of landowners do not succeed to the inheritance of land, in preference to any degree of male relative, or that if a man dies leaving a widow and his son's widow, the latter has the preferential claim to the property on a life tenure: but well-ascertained customs might be reduced to writing and fixed, and then the objectionable uncertainty would be removed. Arbitration is a favorite resort when difficult questions of custom arise; by this means a settlement may be effected, but it is not easy to determine whether it is a really just one; and such decisions throw no real light on the points at issue; at any rate they do nothing towards the definition and right apprehension of the custom, so as to form a precedent for future action.

One of the most striking defects of the Punjab law is the want, both in law and procedure, of rules as to succession and inheritance in European cases, and as to the administration of estates.

But this state of things is greatly, if not wholly, remedied by Act X of 1865; and therefore it is unnecessary to dwell further on the subject.

We have been able only thus briefly and imperfectly to delineate the Civil Laws of the Punjab, as our principal concern is with the action of the courts, and not so much with the law they administer. It was, however, necessary to present the reader with at least an outline of the latter, otherwise our subsequent reflections would be, in many respects, unintelligible. We now turn to review briefly the present Law of Procedure by which the courts are guided.

The primary rules are contained in Part II. of the 'Principles of Civil Law,' above alluded to. We think that this part of

the treatise is intrinsically inferior to the first part; but be this as it may, its rules answered well enough in the first days of our Government when we began to hear and decide cases in districts, where previously even an approach to a formal procedure had been utterly unknown. The people having little idea of time and its divisions, stringent rules for fixing the attendance of parties and witnesses were impracticable; the processes issued were in the simplest forms possible, and the instructions to the courts for carrying out their orders and decrees, were on the same scale. To take the case of execution of decrees; as nearly all the decrees were given for small sums, which could be realized at the worst, by distraint of the chattels of the debtor, nothing but simple rules as to the manner of such attachments are to be found in the code. The more complex forms of property, (so to speak) as incorporeal rights, bank shares, annuities, and salaries, were then almost unknown, and the code is wholly silent about them. It is not too much to say that the Punjab procedure law gives no information on two-thirds of all the questions of procedure that would arise in a more civilized state of society. We will go even further and say, that such has been the progress of the country during the fifteen years that have elapsed since the code was promulgated, that the existing law is practically useless in two-thirds of all the disputed points of procedure that come before our courts at the present time.* We are willing to make exception in favor of those districts where there are no troops, no British merchants, no large traders, and no banks, but in all stations where such institutions exist, and these are steadily increasing in number and importance, we affirm that our statement is strictly true. We cannot be charged with inconsistency in objecting to the present state of procedure law, while we consider the state of substantive law to be comparatively, if not positively, satisfactory. A country is ripe for a reasonably precise procedure, before it is ready to bear a very strict code of substantive law. People practise the usages of trade, and acquire property in various forms, enter partnerships and take contracts, while still in a comparatively uncivilized state; and long before they are educated enough to understand and remember minute rules of law. And in this country especially, it frequently happens that one party to a contract may be quite ignorant and simple, though the other party be wealthy and intelligent; indeed the majority of

* In some utterly rural districts, no doubt, these questions do not arise, therefore the difficulty is not felt. But it is no reason that, because there are some districts which do not require a better procedure law, those districts which do so require it, should be debarred therefrom.

contract dealings, we should say, do exhibit this peculiarity. Hence in all questions arising out of such transactions, simple and general principles of law must be the basis of all judicial decisions, and real equity must be allowed free scope. This state of things may last out well for many years. But with procedure the case is quite different. It must be remembered that procedure laws affect the courts much more than the people, while with substantive law, it is, if anything, the reverse.

Procedure was invented to facilitate the despatch of forensic business, substantive law to create, define, and protect the rights of individuals and of the public. To shew the deficiency of the present Punjab rules, we have only to revert to the case of execution of decrees already alluded to. The rules are fitted for a state of society, when the only kinds of property which existed and need be attached, were household or shop goods, grain, trinkets, and the like: houses and land were but rarely seized on; the procedure rules deal only with these. The moment, therefore, that society has advanced sufficiently for other kinds of property to be held, and the courts have to attach bank deposits, Government and bonded securities, railway and other shares, salaries, debts, and so forth, the law proves defective. Attachments of such property cannot be effected by analogy with other attachments, for no analogy subsists. The courts in fact can only invent a procedure in such cases, and this uniformity, which is the soul of all reasonable procedure, is at an end. Moreover, the persons in whose hands these kinds of properties are held, on behalf of the owners, are under heavy responsibilities; they cannot give up these deposits and shares at the order of court without a due and formal * authority for doing so. Only fancy the manager of a large bank, responsible to his head office in Lombard street, being called on to allow the deposit of one of his constituents to be attached on the authority of a vernacular '*rúbkaré*,' such as would be sent to a tahsildar to attach the chattels of a villager! He requires a formal process in a language which he understands, definitely authorizing him, according to the provisions of a known law, to make over monies to the court. It should be remembered that we have only taken up by way of example, one single topic of procedure: if we were to examine others we should find the law equally defective; we cannot, however, do so without

* By 'formal' we do not for one moment mean, to have every process or document drawn up with all the ridiculous prolixity and complication of an English law paper. Such follies were only invented to provide fees for attorneys and clerks, and we trust the legal authorities will ever be on the alert to prevent, as far as it is their province to do so, such absurdities from taking root in the Punjab. All we contend for is clearness and precision in form.

far exceeding the limits of a review. Whenever the code is silent with respect to any transactions that the courts have even occasionally to go through, it is defective, and hopelessly so; in a case of positive law, a Judge my decide according to analogy, equity, and good conscience, even where there is no rule laid down for his guidance, but in a question of procedure this is impossible. We have admitted already in a note the exception of those country districts, where the courts have to do with but scarcely any but simple agriculturists: we do not apologize for repeating ourselves here, since this point is made much of by those who oppose the introduction of a procedure code into the Punjab. We doubt, indeed, whether the number and importanee of these districts is so great as the objectors would urge,—it is certainly decreasing rapidly, but, at all events, it is a very poor argument for withholding a good procedure law for the province, to say that there are certain districts where the old law does well enough. Let a good and complete law be issued; if in certain places a portion of its provisions do not come into use, the law will lie by; but at the same time there will be an uniform and satisfactory authority for settling questions whenever they do arise.

The objections to a new procedure law might, perhaps, have some weight if there was no code yet in existence, and it became a question whether it was worth while to undertake the heavy task of legislation for the provinces; but when good laws are already enacted, and are only waiting to be introduced, we think them futile indeed. This leads us to consider another point that is raised, *viz.*, that the Punjab Procedure Code is not the only law in the province by which the courts may be guided; since there are the judicial circulars, and also the ruling of the Judicial Commissioners, which direct that on points on which the Punjab Code is silent, Act VIII of 1859 is to be followed.

The circulars do not afford as much assistance in questions of procedure as they do in law; and as to this ruling relative to Act VIII, we consider that it is a complete admission of the insufficiency of the Punjab law *per se*. We are therefore much surprised at the earnestness with which the present Judicial Commissioner of the province deprecates, in the report before us, the introduction of the civil procedure code. We presume that Mr. Roberts does not disapprove of the rulings of his court as to the force of Act VIII, when the Punjab law is silent. If then those parts of Act VIII, which deal with points not mentioned in the Punjab law, are proper and useful, why is not the whole Act the same, even on points which the Punjab law does deal with? In other words, eliminating those parts of Act VIII, which are not met by any

provisions in the Punjab code, there remains the rest of the Act covering the same subjects as the code; in what respect, we ask, are the provisions of the Board's code better then those of Act VIII? And if some parts of Act VIII are confessedly good for the Punjab, why not the whole Act?

There is another strong point in favor of the introduction of Act VIII, either in its present or in an amended form. And, that is, that it is actually in force in the Punjab in all the Small Cause Courts, which decided, in the year 1864, more than one fifth of all the civil suits instituted.*

The present state of the Punjab procedure also results in much confusion and want of uniformity. The variety in the form of processes issued, is remarkable. Practically there are perpetual doubts as to which law is to be followed; each officer acts much according to his own opinion; one insists on carrying out the Act, while another is as eager for the code. Discussions between the courts on these points art not unfrequent.

The principal objections however, which Mr. Roberts has to the introduction of Act VIII or its revised successor, are based on a statement that these laws are 'elaborate and artificial.' How a procedure code can be any thing else but artificial we do not very clearly understand; such codes do not grow by nature, they are invented and put together by the skill of legislators to facilitate public business, and are, therefore, necessarily artificial. As to elaborateness we do not see how that is objectionable either. Elaborateness merely indicates that the law has been very carefully and deliberately arranged, and prepared with great labour, so as to ensure completeness in detail. The Penal Code (Act XLV of 1860) is, perhaps, the most elaborate piece of legislation that has appeared for years, in this or, indeed, in any other country, but we never heard any one object to it on that account.

We suspect however, that these terms are used without any very precise reference to their meaning. They are, in fact, synonyms for completeness and minuteness of provision for all possible question of procedure. If this be so, the objection fails entirely: for the fulness or completeness of a code affects the judicial and ministerial officers of the court, not the mass of the people. The Judges will have more to learn on the subject, and that is all. If the law is operating in a very uncivilized or rural district, a large number of its provisions will never be called into action, but the people will not be the worse by the existence of such provision, nor will the Judges be the worse for having

* The total number of suits in the province was 103,73, of these 22,976 were disposed of in the Courts of Small Causes.

to study them. On the other hand, in large cities and stations, where greater difficulties and nice questions of procedure arise, there will be the inestimable advantage of a ready and authoritative solution to every question, instead of the hopeless efforts of the court to act without any definite guiding principle. We are unable to see, for instance, that the provisions of Act VIII of 1859, relative to the summoning of defendants or witnesses, are one whit more difficult to understand, or more troublesome to carry out, than the loosely worked rules of the Punjab code on the same subject. If they are more minute we think that it is infintely more troublesome for a Judge not to be told by law what to do at all, than to be given minute instructions for every possible case that may arise. It is remarkable also, that Mr. Roberts should have taken the absence of judicial training of the Judge in the Punjab as a ground for objecting to a good procedure law. We should have thought that the less trained a person was in judicial work, the more he needed precise information and instruction on procedure. To conclude our arguments in favor of the introduction of a new procedure law, we shall only advert to the analogy of the Criminal Procedure Code. Act XXV of 1861 is at least as 'elaborate and artificial' as Act VIII of 1859, and yet no one can deny that it is working admirably, and that its introduction, notwithstanding certain defects in the Act itself, has been an unmitigated benefit to the province. Why a good Civil Procedure should be expected to prove otherwise we are at a loss to conceive. In advocating the supersession of the procedure of the Punjab code, we do not mean to bind ourselves to support either Act VIII or its proposed successor, which Mr. Roberts describes at 'double its length and still more elaborate.' We are perfectly willing to admit that there are defects in Act VIII, as far as Punjab courts are concerned: for instance, the provision of the Act as to the distinction in summoning a defendant for final hearing and for settlement of the issues, is perfectly unnecessary. To the revised Code there are still greater objections—it is much too prolix; it contains a number of needless provisions, it savours in many places of tautology, and, worst of all, it exhibits that want of the classifying principle which,—without detracting in the least from the well-earned reputation of Mr. Harington,—we must say, too often characterizes the Acts drawn up by that eminent lawyer. The want we refer to is exhibited by the manner in which various provisions on the same point are scattered through widely different sections of the Code, so that when these are all taken together, they are found to qualify, and sometimes apparently to contradict, one another.

This is not the place, however, for a criticism on the new code; and we will not dwell longer on the subject; indeed, reflections on its possible operation as it stands would be premature, since the code is not yet beyond the reach of amendments and alterations. To express an opinion merely in passing, we doubt whether Act VIII, slightly altered, would not be the best law for the Punjab.

It is now time to consider the action of the Civil courts.

The jurisdiction of the courts has just been fixed by Act XIX of 1865. Previous to that, the powers of different officers were described partly in the Punjab Procedure Code, and partly in certain circulars. The courts of original jurisdiction are the the district courts including courts of Tehsildars and courts of Assistants of three grades, having full, special, and ordinary powers,—the divisional courts, or courts of Commissioners, which hitherto possessed only appellate jurisdiction, but now can take up any important civil cases they please. The highest court, that of the Judicial Commissioner, exercises only appellate and divisional jurisdiction, and will probably soon be re-placed by a chief court, as described and legalized in Act XXIII of 1865. The Small Cause Courts are separate, and have jurisdiction under Act XI of 1865, &c.

The courts of Commissioners and Deputy Commissioners can try and decide cases without limit as to value. Assistant Commissioners with full powers try suits up to 10,000 Rupees: and Assistants with special and ordinary powers have cases up to 500 Rupees and 100 Rupees, respectively. Courts of Tehsildars exercise jurisdiction in cases within a limit of 300 Rupees, but every Tehsildar is appointed to a special limit as to the value of suits (within 300 Rupees) which he may try. Tehsildars only take up cases within their own tehsil, unless the case is specially referred to them by the Deputy Commissioner. Of the appellate jurisdiction of the courts we shall speak presently.

It will be thus seen, that Act XIX does not very materially alter the constitution of the courts from what it was before, except that it raises the powers of an Assistant with full powers from Rupees 5,000 to Rupees 10,000, and confers original jurisdiction on the divisional courts. The Act rather unnecessarily curbs the action of the local Government, which would occasionally find it desirable to confer powers on officers in particular districts, without reference to the class to which that officer belonged. Such authority is not given to the Government by the Act. On the whole it must be admitted that it is an advantage to have the Punjab courts constituted on a clearly defined basis; previous to this Act, the courts could not point to any rule which

distinctly gave them existence and authority; these powers too were only defined in circulars, which differed from the rules of the Procedure law, and which moreover were never very closely acted up to.

Cases are instituted in court by means of petitions. These are received every day in open court by the Deputy Commissioner or his Assistants empowered to do so. The petitions consist not only of petitions of plaint, but also of criminal, revenue, and miscellaneous petitions relating to local funds, licences, pensions, and other money matters, to town rules and taxes, to applications for copies of orders, and many others too numerous to mention. The miscellaneous petitions having been referred to the proper authorities, the civil and criminal petitions are distributed among the courts, according to the power of those courts, and with reference to the number of cases previously on for the file of each. This is ascertained by reference to a register kept for the purpose. The civil petitions include revenue suits (as they used to be called), and those class of claims which are heard summarily.

Then each court gets a miscellaneous collection of civil and criminal suits simultaneously instituted, and they are all tried one after another to whichever side of the court they may belong.

Besides these, the courts have to dispose of a number of criminal cases, which are not instituted by petition in court, but are sent up through the police as Crown prosecutions. These usually arrive after the court has commenced sitting and cause further confusion.

This *melée* of work is the worst feature in the Punjab courts, and it is the most inexcusable defect, because it is one which might be so easily remedied. All regularity of work and the maintenance of a definite list of cases for trial, by reference to which suitors may know when their case will come on,—is quite out of the question. The court, let us suppose, has fixed a set of somewhat important civil suits for hearing on a certain day. The Judge has just entered on the work of the day, when a heavy case of burglary or murder is sent up by the Police, the immediate hearing of which is necessary, lest the witnesses should be tampered with; or perhaps there is a man *in articulo mortis*, whose statements require to be taken down at once, or some police officers have been called in from their most particular duties at a distant station, and cannot be detained. The civil cases are, therefore, postponed; and those appointed for the day in question are thrown upon the next day's file, which is, of course, broken up, and so on; and when this irregularity is caused,

not merely by one case as described, but by a multiplicity of such interruptions, all regularity is out of the question. A court never knows what criminal work is likely to come in, and criminal cases cannot be deferred four or five days, as civil suits can, without inconvenience.

When cases are thus put off, it frequently happens that the parties who have come in for a case with their witnesses, finding their case postponed, go off home in despair; and then they have to be summoned all over again, or waited for till they re-appear. The parties are not to blame for this;—it is the system of the courts. It is marvellous that the average duration of cases is as short as it is. We suspect that these averages are not quite so accurately made out as they might be; we are quite certain that the statements, shewing the period of detention of witnesses, are largely manufactured without reference to facts; the lists from which these average and general results are deduced are altogether in the hands of native writers, and no kind of check is, or indeed very well can be, exercised over them, as regards a great portion of the subjects dealt with. In speaking too of the short averages of duration, it must be remembered that the great number of suits tried in the Small Cause Courts, if included for the purpose of striking a general average, largely effect the result.* But even if six days be the real average, we do not think it a very low one for suits, whereof a large number is for sums under ten Rupees. Certainly it might be made less, if civil and criminal suits were separate, and cases heard with regularity and despatch. There is another great evil attending the confusion of work in a Punjab court. The cases are rarely, if ever, heard on the days appointed, and consequently people are most lax in attending the courts. Now, of all business in the world, law

* In proof of the bad effects of the mixed duties of the district courts, we may mention, that the total number of civil suits disposed of by the assistants and extra assistants, 117 in number, in the year 1864 amounted to 29,777, while 8 small Cause Court Judges disposed of 2272 cases. Next, we must take into consideration the other duties of assistants: but supposing that each assistant only devotes half his time to civil work; then in order to decide the above-mentioned number of cases, 58 or 59 officers solely engaged in civil work would be necessary, (since 117 officers devoting half their time are equal to 58 or 59 devoting all their time.) Thus, under district procedure, it takes, in round numbers, about 50 men to do rather more than what 8 men do in the Small Cause Courts. We are willing again to make large allowance for the more difficult nature of suits in district courts, for the necessity of a full record and judgment, and for the punctuality which is enforced in Small Cause Courts (and ought to be in others): but having done all this, the disposal of work in district courts is out of all proportion to that of Small Cause Courts, and we cannot but attribute the difference to the clumsy system of the former.

is pre-eminently that one of which punctuality is the soul. The people of the province are but little given to appreciating the value of time, and the irregularity of hearing suits tends to increase their habits of unpunctuality. Were cases called on one after the other as fixed in the day's list, a few suits would be at first committed or struck off on default, but in a very short time the people, always acute enough in what affects them in a pecuniary point of view, would learn to attend at the appointed day and hour. No injustice or even hardship is practically occasioned by committing a case, as the courts always allow re-institution; the plaintiff bearing costs wholly or partially, which serves to brighten his memory for the future.

At present a suit is usually not heard when it is appointed, but when the Judge can find time to hear it. If any one doubts these facts, let him only enquire from any intelligent Judge in a populous trading district, as to how he arranges for hearing his cases, and he will notice the same statement.

In no civilized country in the world, does one Judge attempt to dispose of civil and criminal cases all together, besides other miscellaneous work. The division of labor is not required according to the state of the people, or the law; it is simply an arrangement which benefits the Judge and the despatch of business: it would be absurd to say that the Punjab is not advanced enough for a division. It is strange that these things should not have attracted the attention of the higher judicial authorities; but the fact is, that these officers have very little practical acquaintance with the working of the courts. It will generally be ten to twenty years since a Judicial Commissioner or a Commissioner has been an Assistant, and things have changed entirely since then. It is by the Assistant Commissioners, and especially those with full powers, that the great body of original judicial work in the districts is done. Of their difficulties and irregularities in working, the upper Courts see nothing. The utmost that the Judicial Commissioner can learn, is from the records of cases which come before him for revision, or on appeal. The evils arising from the confusion of works do not appear on the record, except indeed it cause the occasional omission of technicality required by the Procedure Code. Generally speaking a painstaking officer is determined to work out his cases well, and seeing this, the upper courts fancy all is well, not knowing what difficulties are contended with, and how a little system and arrangement would lighten the work of the lower courts, as well as improve its character. Sometimes the appellate courts do, on revising the records, discover a series of omissions; a charge sheet is not sealed;

a deposition has not a memorandum of attestation attached; but they do not see the cause of these omissions.

An officer in the confusion of his multifarious duties cannot help such defects, especially as there is little or no ministerial agency (as far as English writing is concerned,) to help him in carrying out the formal and technical parts of procedure. All these difficulties might be got over by the simplest system of division.

The younger subordinate Magistrates who are learning their work, must be left alone: practically the criminal work within their competency is but little; and generally their work is not heavy in quantity or difficult in kind. Hence a division in their offices is not so much required, and it is important that they should acquire experience in both branches of work. But with Assistants vested with full powers,* the case is quite different: their work should be divided. Let one court sit on the criminal side, another on the civil, each for a certain period, and then change about; the one that took criminal work before, taking up civil for another period, and *vice versâ*.* They would not continue so long at one work as to forget the other.

In large districts where the work is heavy and there are several Assistants, two might sit for civil and one for criminal work, according to the amount of work on the different files. If there are native Assistants it would be very desirable to let them dispose of cases connected with marriage, betrothal, maintenance, and the like, which from their familiarity with the customs and character of natives, they are peculiarly fitted to dispose of. Every district officer must of course arrange according to the known amount of work that has to be transacted of either kind; practically, we believe, a suitable division could always be effected. If the work of either kind is so light in any district as not to afford sufficient occupation for one court by itself, then indeed the division would be less necessary.

The work would be so regularly and punctually disposed of under such an arrangement, that each court would leave very few cases undecided (especially in the criminal court) before the Magistrate gave up his seat. In rare cases where a suit did remain unfinished, he might dispose of it by a special hearing. In regulation provinces the work is separate, and we never heard any one make a difficulty, or say that the officers got no experience of work.

* This arrangement would completely remove the objection, that if officers did one kind of work only they would not become qualified to take charge of a district. By taking up each work in its turn they would not only do both, but do both better. Besides, the training for a district is, on the whole, more administrative than judicial.

In answer to all this, some one, perhaps, will exclaim, that we wish to convert the Punjab into a regulation province. Not at all. In proposing to divide the work, we do not propose to introduce any thing that is not at this moment in the province. We do not alter the powers or the constitution of the courts at all; we merely wish to see confusion reduced to order, and chaos to classification; to change the over-worked Assistant,—striving to find time for his cases, and leaving his court long after all reasonable office-hours are over, and yet still surrounded by complaining suitors and witnesses begging to be heard and dismissed,—into a Judge who shall hear his cases with ease and punctuality, who shall rarely be compelled to keep his *assamis* waiting beyond the day, and who shall be able to close his court at a proper and fixed hour, thus affording reasonable relaxation to himself and the ministerial officers of the court.

We believe all this is quite possible, if only a division of work were ordered; at any rate the plan deserves to be put to the test of fair experiment. We do not wish to see the Punjab brought under regulation; we hold and avow the opinion, that even as it is, it is far better off than a regulation province would be under the same conditions. The objections offered to such a division as we have proposed are mostly futile. To the supposed loss of experience we have already replied; and as to the excuse that officers get tired of one kind of work, it is too silly to notice. We should think that any person with a moderately systematic mind preferred order to confusion, nor have we even heard this complaint from provinces, where the work always is, and has been, separate.

We have dwelt thus, at length, on a point which some of our readers may consider unnecessary; but the evil is practically so great, and the remedy so simple, that it seemed to demand special examination in order to bring it to notice. We now proceed to discuss some of the more salient points connected with the action of the courts, and especially those which have been taken up in the Report before us.

The first thing that has attracted Mr. Roberts' attention, is the scale of institution stamps for civil suits. The burden of his remarks is, that the costs of small suits are too high, and those of large suits much too low. 'The costs,' he says at paragraph 17, 'vary from 30 to 40 per cent. on the claim, in the smallest suits 'to less than one per cent in the largest.' The result deduced from the table, which follows this paragraph in the Report, is that in 1864 in the case of suits, not exceeding sixteen Rupees in value (which formed one half of the whole number instituted), the per centage of costs to value was 13 per cent., or including

other costs as *tulubana* or Sheriff's fees, 26 per cent. Mr. Roberts adds that in some parts of India the costs are as high as 70 per cent. He therefore wishes that the scale of stamp fees should be re-adjusted, and that the costs for small suits should be reduced.

That suits for large sums are much too lightly taxed we fully admit; we believe that in all the higher suits the stamp fees might he doubled, if not nearly trebled, with perfect justice. On the question, however, of reducing the costs of small suits, we are bound to say that Mr. Roberts' reasoning is both theoretically and practically fallacious. He is wrong theoretically, because he has overlooked some material points which greatly affect the question; he is wrong practically, because no evil has yet arisen from the working of the present rule, and also because great evil would arise if it were changed in the way of diminution of fees.

In the abstract reasoning of the point, Mr. Roberts has altogether overlooked the real nature of costs. Costs are the price paid, in the first instance, by the claimant, for the assistance which the State gives him by its Judges, Sheriffs, Bailiffs, and other legal machinery, in recovering or establishing his rights. It is, therefore, not sufficient merely to balance the money value of costs against the money value of the claim. We must consider what the plaintiff can get done for the costs he pays, how much machinery he puts in motion to help him. Let us take the case of a man suing for sixteen Rupees: his institution stamp is one Rupee, his *tulubana* four annas. For this he can summon not only his defendant, but fifteen or twenty witnesses from all corners of the district into the bargain, and, perhaps, get a commission issued, as well, to examine a witness in another district. If his defendant or witness live in other districts he has to pay eight annas additional for postage of processes, and the summons can be sent to the very frontiers of the country. If a plaintiff can get all this done for one Rupee and four, or, at the most, twelve annas, we think there is no need for him to complain, far less for any body else to complain for him.

The objections to Mr. Roberts' proposal are extremely well put in the letter of Government, appended to the Report, and containing the Lieutenant Governor's remarks thereon. The letter deserves to be studied; it is full of good sense and shrewd observation.

'On the one hand,' writes the Secretary, 'the annually 'increasing number of petty suits shows, that the existing scale 'of costs is not preventive of free resort to courts of justice. 'On the other hand, the fact that 12 per cent. of the cases

'are decided entirely in favor of defendant, and, of the remainder, '47 per cent. partially in favor of the defendant, shows that 'false and exaggerated claims are even now too numerous; and 'lastly, when it is considered that under the existing scale a 'suitor in the district court in a case of less than sixteen 'Rupees in value, can institute his suit, summon the defendant '(wherever he may be within the province), and an unlimited 'number of witnesses from the remotest corner of a district, 'for the consolidated sum of one Rupee six annas,*—the Lieute-'nant Governor is not prepared to support a measure which, 'by reducing the penalty on rejected claims, would tend to 'facilitate vexatious and fraudulent litigation.' This extract sums up the whole argument against a decrease of costs so well, that we need do no more than allude to the other practical objections against Mr. Roberts' proposal. The first is, that no body wants a reduction. Did Mr. Roberts ever hear any one in the Punjab complain of the costs? Is it not notorious that small suits are yearly increasing, and not decreasing as they ought to be if the pressure of costs is unjust? But Mr. Roberts claims sympathy for the debtors as well as for the plaintiff; he thinks the costs press heavily on poor debtors. In that case, we reply the debtors should either not incur debts, or should pay them off on demand, without driving the creditor to sue: in all cases where it appears to the court that the complainant has sued unnecessarily, the recovery of costs is denied him, and he has to bear them himself. If the costs were lowered there would be a greater tendency than ever for creditors to run to court without first taking pains to recover their dues by amicable means; and then the debtors would be more harassed than ever. The Commissioner of Lahore has some excellent remarks on too easy justice; he remarks that a suit is now so cheap and easy, that sums of money are lent almost without enquiry or security. It is worthy the attention of those who wish to lower stamp rates, whether the increased facilities for filing suits which would then exist, would not very materially affect the quality of evidence, if not of the stamp and registration revenue for bonds and securities, by inducing people to trust to a suit with parole evidence, instead of on written and properly attested bonds. On this subject it remains only to add with regard to the increase of duties in larger suits, that such a proposal would be carried out with great benefit to the revenue, without hardship to any one.

* It should be *four* annas, or with postage twelve annas.

Natives gladly pay any tax which is, or which seems to them to be, a remunerative one. No murmur is ever heard when the law fees are demanded, and when the new rule for the deposit of a fixed sum or postage (orignally twelve annas and only subsequently changed to eight annas) was issued; this too was and is still paid cheerfully.

Although it is quite foreign to our present subject, we cannot help here remarking how much better increased stamp duties, succession and probate taxes, and others of the same kind, would answer with natives, than that most vexatious and unequal of Indian taxes, the Income tax, about the renewal of which so much has been said and written of late.

We cannot leave the subject of costs without a few words on the other fees which are charged in courts besides the institution stamp; namely, the consolidated '*tulubana*' or Sheriff's fees. The stamp, the *tulubana*, and the postage, generally constitute all the costs that the successful party recovers; the miscellaneous costs and expenses of witnesses are very rarely asked for, and the great majority of the country people do not even know that they are entitled to recover them.

The *tulubana* at present is very badly arranged; it is supposed to be a fee which covers the costs of serving all the processes in a suit, yet it is fixed wholly with reference to the value of the suit, and not at all with reference to the number of processes issued.* The most absurd results follow. For instance, if a man claims sixteen Rupees, the *tulubana* for his suit is four annas, and for this he can issue a summons to a defendant, and an unlimited number of witnesses as already remarked: another man will file a suit for 20,000 Rupees, and pay as *tulubana* 300 Rupees;—yet probably having documentary evidence, he will need only two or three witnesses to be summoned in the case. The evil is certainly great, and it is proper to observe that we believe a change to be in contemplation. It is, however, an evil which, like most of those which affect the Punjab court system, lies upon the surface, and might be easily remedied, if only the liberal, energetic, and progressive element would become more prominent in the Judicial Commissioner's office.

* *Tulubana* is now taken by means of a slip of notice paper, on which a faint uncoloured stamp is impressed. Formerly law stamps of the required value were used, and subsequently the fee was paid in cash. This last plan is far the best, as it obviates mistakes and simplifies the accounts. The new impressed stamps are wholly objectionable: they involve extra accounts and a large amount of trouble to the treasury officer, and as they are all alike, it is next to impossible to ascertain their value; mistakes are consequently frequent.

The simple remedy for the present state of things would be to make the *tulubana* have reference both to the value of the suit and also to the number of processes required; so that a suitor, however many or however few witnesses he required, need only pay a fixed sum determined according to the value of his suit for each process. Supposing the rate for a sixteen Rupee claim to be one anna per process,—a party requiring fourteen witnesses would pay fourteen annas: again, supposing the rate for a 10,000 suit to be fifty Rupees, if the party required two witnesses, he would have to pay a hundred Rupees, and so on. The details of the plan could be arranged without difficulty, and need not occupy us any longer in this place. We do not advocate in anywise Mr. Roberts' proposal to consolidate stamp and *tulubana*, because in that case the evil we complain of would be stereotyped, since the *tulubana* must of neccessity be regulated solely according to the value of suit.

The machinery for the execution of processes and service of summons is fairly successful, except in cases where it is necessary to send the summons or process to another district. In such cases, besides all the delays and inaccuracies arising from the postal arrangements, great carelessness is frequently, if not usually, exhibited, in carrying out the process when it does come: the issuing court has to send frequent reminders before an answer is elicited, and cases are kept long on the file. This point is worthy the attention of the Judicial Commissioner, being one of those subjects of which he cannot very well have any information. A regular system for the despatch of such work should be introduced, and a book having dates of receipt and return be kept up. The courts should be instructed to do their utmost to facilitate the proper execution of all processes, and to return them punctually.*

The arrangements for the ministerial duties of the courts are not good. The serishtadars and readers, in proportion to their heavy work and responsibilities for returns, technical accuracies, and the care of records, are very much under-paid; of course, they eke out their pay with bribes, which the people are still foolish enough to offer, although under the present system of compulsory autograph record of evidence and judgment, their influencing a decision is next to impossible; unless indeed the Judge is both dull in intellect and careless in work, which happily is not often the case. It is right to notice in this place that

* We believe the number of processes served beyond the limits of the issuing districts is very great; statistical information on this point would be useful.

the mode of recording evidence and decision, both by the Judge in autograph, and by the writer of the court in the vernacular, is excellent; it is generally very well carried out on the Punjab, certainly far better than it is in many regulation provinces. But to return to the ministerial officers. If the serishtadars were much better paid, and really selected from good families, and were treated as persons of consideration and of dignified office, and were always obliged to be well educated and, if possible, to know English, the work of the courts could be far better done than it is at present. European clerks of the court are much wanted in the larger stations, where European suits and the issue of English processes are frequent. At present the Judge has to do all the technical and mechanical work himself. The clerks of the Deputy Commissioner's English office are generally overworked as it is, and cannot find time to do the writing of the courts, except after such delay as renders their help valueless.

In speaking of the improvement of the judicial agency of the court, we take occasion to remark on extreme injustice of the proposal, to take the accumulated surplus of the *tulubana* fees, and credit it to the general revenue for general purposes. These fees are charged on litigants in the Punjab for the express purpose of paying for the machinery of justice; when the country is crying out for increase and improvement in that machinery, it is in highest degree impolitic and unreasonable to take away provincial funds which might be, and were always, designed to be devoted to such improvement.* We must now hasten briefly to consider the kinds of suits instituted. They consist of (1) suits for breach of contract; (2) damages for breach of betrothal contracts; (3) suits for possession of wife, &c.; (4) damages for torts or personal wrongs; (5) suits for succession, rights, and inheritance; (6) claim to houses or land not involving question of inheritances; (7) suits for the right of pre-emption; (8) parole debt and bonded debt; (9) suits for debt on account, including claims of partners which depend on settlement accounts.

This classification is not intended to be a scientific or formal one, it only expresses in general terms the nature of the suits which are most common.

It is a pity that the report contains no kind of information as to the relative numbers of the various kinds of suits instituted. Such information would be of great value, by affording an index

* It is truly astonishing that such a proposal should have been entertained by Government at all: the tax in question is so ostentatiously taken to pay for sheriffs, bailiffs, &c., that it is as unreasonable to take it for general purposes, as it would be to devote the educational, or any other special cess to building barracks or fitting steamers.

to the progress of trade, and the alteration of the habits of the people.

On the first kind of suits mentioned, there is little to be said except that such claims are greatly on the increase, especially in large cities where railways, timber contracts, building, and road contracts, are commonly undertaken.

The second class mentioned is also referable to the general head of contracts, but has been kept separate, as these cases are peculiar in their nature and procedure. They deal with breaches of betrothal or of promise of marriage, and are either between the parents or relatives of the parties to the betrothal, who are usually mere children,—or else, although rarely, between the parties to betrothal or marriage themselves, one or both being of age. This class of suits is very characteristic of the country; fortunately the Government letter already alluded to contains very noteworthy information on the subject.

It appears that suits for betrothal damages have nearly doubled in number within the last five years. In the Kangra district a system of registration of marriage and betrothals was introduced with a view to check the occurrence of disputes: special tribunals for hearing cases of this nature were also constituted. Notwithstanding these rules, which were intended to check the evil, the number of suits has, in the district in question, more than doubled during the year 1864. On the other hand, in the Delhi and Gurgaon districts, the number of such suits was remarkably low. The Lieutenant Governor asks if the facilities for evading these contracts are greater now than formerly, and if so what is the remedy? The remedy appears to us to be that the courts should not entertain cases at all, unless certain simple and well-defined conditions have been fulfilled by the claimant; such, for instance, as that the contract shall be in writing, and shall have been attested, and also registered at some appointed place.

The nature of these cases is probably well known to most of our readers. Two persons arrange for a marriage between their families; the one's son, let us say, is to marry the other's daughter. After certain preliminary offerings of sugar and a rupee, as '*shagun*,' or good omen offerings, and after the interchange usually of presents, the betrothal is considered as fixed. The future husband and wife are probably at the time little children, and the marriage is not to come off for years,—often a betrothal is from seven to ten years before the marriage. There is also a kind of second betrothal which follows the first, being a more definite agreement as to the marriage, while thirdly there is a last understanding of the parties by which the day of marriage is

finally fixed. All these stages are gone through at different times, and a breach of promise my occur at any one of them. It frequently happens that in the course of the long time that must elapse between the first betrothal and the marriage, one of the parties finds he can make a new betrothal on more advantageous terms than the one he has already contracted, and he immediately breaks off with the first. Sometimes it happens that a rich man comes to the father of the girl, and induces him by presents to break off a match and give the girl to him, he undertaking to pay any damages that may be decreed against the father at the suit of the disappointed party. However, if it appears to the court that this has been done, the court can authorise the plaintiff to make the rich party, who procured the breach, a co-defendant. These cases are always tried with the aid of arbitrators appointed by the court, without, or, if possible, with, the consent of the parties, one arbitrator being appointed by each party; and the third either by the court or by mutual consent of the litigants. The court determines the fact of the betrothal; the measure of damages is fixed by arbitration. Although the courts do not allow either party to recover money actually paid as a consideration or price to the father of the girl, yet it is often very difficult to distinguish the presents made from the direct payment of a consideration, so that practically the damages awarded cover the expenditure. It is not too much to say that these cases are wholly in the hands of the arbitrators who decide them; the courts can rarely, if ever, obtain real evidence of the whole state of the case, and the causes which led to the dispute. These things are, however, well known to the residents of the smaller villages when the parties live in such, and sometimes hearsay evidence of what is notorious from the talk of the village is really useful as a clue to the case, far more so, at any rate than the direct evidence, which is too often got up for the occasion with the requisite amount of coloring. The remedy for these evils is not difficult. The registration of all marriages and betrothal, by officers appointed for the purpose, should be made compulsory; besides this, the contracts themselves should be in writing, and the courts should be prohibited by law from entertaining any suit for damages, in which both the above conditions had not been carefully fulfilled. We think also, that the courts should not entertain suits for damages in cases when marriage is refused by one or the other of the parties betrothed in infancy when they come of age.

A similar law of marriage registration would apply also to another class of cases; those on which possession of wife is claimed. These cases generally commence with a petition on

the criminal side against some one for abduction of the wife, under Sec. 498, Indian Penal Code. This is, on the initiatory examination of the complainant, in about 50 per cent of cases, ejected at once. The woman has gone, of her own accord, to her parents, or the marriage with complainant is not proved, or some other reason making Sec. 498 inapplicable appears, and the party is told that his remedy is in the civil court. Of course various grievances are alleged by the wife or the defendants, who are usually relations, who keep her from her husband; these pleas need no special mention. In many cases however, the woman denies marriage with the plaintiff; this plea is often true; it is often found that the woman's first husband is dead, that according to some custom she has been taken by the deceased's brother, or other near relative, and married forcibly. In such cases the the husband's friends readily give evidence that the marriage was performed with full consent, and the woman's denial in court is attributed to the promptings of the defendants. In other cases marriage is performed by mere capture, or by the '*chádar dálna,*' a ceremony in which a sheet is merely thrown over the woman by the man in token of her being made his wife; indeed, there are forms of marriage to which it is almost absurd to apply the name. In all these cases the courts should refuse recognition of the marriage, unless it was properly registered, and also had been performed according to some proper ceremony, recognized by orthodox Hindu or Mohamedan law.

All divorces ought also to be subject to registration; these form a frequent ground of defence in marriage cases. The Mussulman law permits divorce at the will of the husband; but a frivolous and capricious divorce gives a claim torecover dowry and damages. Divorces should, therefore, be registered and required to be in writing.

Following the list of suits filed, we may pass over without remark suits for damages or personal wrong, and claims to inheritance; we have already remarked upon the law in the latter class of cases, and as to the former we will observe that the amount of damages is nearly always arranged with the aid of assessors or arbitrators. In the case of suits for pre-emption which follows on the list, we think that the right is much too largely allowed by the courts. The real use of the privilege is to prevent the dismemberment of a village community, by one person in a village selling his lands to an outsider; to enforce the right in every case of the sale of house and land property in cities and elsewhere is carrying it much too far.

We now come to suits for parole and account debt. Almost every individual above the state of actual poverty

keeps an account with some *'sahukar'* or money-lender, or with the *bunya*, or with both. The shop-keeper has his books, but his customer rarely has any memorandum of the transactions. As a general rule, accounts are kept with a fair amount of accuracy. Every now and then the shop-keeper and his customers have a settlement of accounts and strike a balance, which is commonly written down on the book and signed perhaps by the customer, and usually by one or two witnesses. Sometimes a separate memorandum, intended to be a bond, and written on another page, is drawn up; but this is useless as evidence unless it bears a bond stamp. It often happens that the account or *'len den,'* has gone on for years,—perhaps with the customer's father before him; old balances will have been struck and entered, and the subsequent items written after them till a new balance is struck, and so on. Each time the balance is struck it is increased with heavy interest, and so the account goes on till the customer turns round and impeaches the accuracy of the old balances, or objects to the heavy interest which the shop-keeper has gone on adding and adding in a style which bears no remote analogy to compound interest. Then a suit ensues. In a number of cases the accounts are not very lengthy, and the interest not excessive; in such cases there is no difficulty. The shop-keeper makes his claim, because he sees the customer flush of money from a good harvest, or a fortunate marriage, or some other cause. But in cases where there is a real disagreement, and the accounts are old and lengthy, the difficulty is much greater. The statutes of limitation do not apply, because the account has continued on both sides without intermission.

It sometimes, indeed, happens that in an old claim a creditor writes in two or three items of re-payment, in order to make it appear a running account, and bring it within the limit. He thus hopes to save the claim by sacrificing a portion of it, and expects that the fabricated item will escape without scrutiny as apparently entries against interest. The courts, however, have the option of throwing out the claim altogether, where this appears to be the case.

The evidence brought to establish claims on account generally consists of the shop-books, shewing the account, and probably also parole evidence to prove the striking of certain balances, and the admission of the debtor that they, as well as the interest charged on them, are correct. The reception of shop-books in evidence is, or rather is supposed to be, regulated by Judicial Circular, No XI. of 1859. This circular provides that certain bonds exceeding fifty Rupees in value shall not be admitted in evidence unless

registered; and also that shop-books shall not be received at all unless they consist of both day-book and ledger. The operation of this rule usually forms a subject for discussion in the Annual Reports, and never fails to elicit a great variety of opinion. On the whole, we have no hesitation in saying, in the first place, that the circular, so far as it relates to shop-books, is not much acted up to in five courts out of ten in the Punjab, also that in cases where it is enforced, the appellate courts practically, if not verbally and intentionally, subvert it, by animadverting on the non-reception by the original court of books which really come under the excluded category. We do not object to the circular altogether, but we think that it ought to be a circular of admonition and caution rather than a positive rule.

It must be remembered, that the practice of keeping two shop-books, *i. e.*, both day-book and ledger, is utterly unknown to the great majority of shop-keepers in the Punjab. Of course regular saráfs and large shop-keepers in towns and cities keep their books in both kinds, and with a regularity not surpassed even by a London firm; but all village *sahukars* and small shopkeepers generally never do keep both books. Where the single book is kept it consists of various pages devoted to the accounts of different dealers. The items are generally entered according to date in the day-book style, and are not, after all, so suspicious as would seem to be indicated by the circular. Cases of forged accounts are very rare, and are by no means difficult to detect when they do occur. The only common practice is the attempt to enter items of re-payment with a view to defeating the limitation law; this has been already alluded to.

The objections made against accounts by the defendants are generally on the ground of excessive interest, or the old balance is repudiated, or particular items are charged too high; but allegations of fraud and interpolation are rarely made (except in those general items of complaint which natives often indulge in, and which mean nothing).

From this we conclude that even when only one book is kept, that one book is generally speaking better proof than the parole evidence which is brought to supply its place if rejected. It is therefore questionable whether the circular in laying down an inflexible rule does not militate in many instances against the primary rule of all evidence, that the best which the nature of the case admits must be produced. The reader will observe that we only object to the rule which rejects the book *in toto*, and not to any rule which requires additional evidence to support it.

Where the book is rejected under Circular XI, the shop-keeper is not without remedy: the suit, which would have been one of

accounts, is heard and decided on parole evidence, and the case passes over to the category of suits for parole debt. In some instances, no doubt, the shop-keeper induces his customer on assenting to his balance to write a bond on the spot, (so far the effect of the rule is not bad), and then the debt is treated as a bond debt. That this is the case is clearly shown by the statistics of the year under report, which shows a large increase in the number of suits for parole debt. The fact has not escaped the notice of the Lieutenant Governor, who, in the letter already quoted, naively asks 'whether the marked increase in suits for parole debt is to any extent attributable' to the operation of the circular.

We reply that most undoubtedly it is; not indeed that the 'keeping of accounts is discouraged,' as His Honor suggests; but that the people adhere to the immemorial practice, and sue for their balance as a parole debt when they cannot get their single book (which is all they have kept for years back) admitted as evidence. Much the same objections may be urged against the absolute inadmissibility of unregistered bonds. A bond without the sanction of registration may be indifferent proof, but parole evidence is infinitely worse: moreover, the court always sees the bond it rejects, and is usually, albeit tacitly, influenced by the sight. And here we cannot help pausing to reflect on the absurdity of all positive rules of evidence, which reject proofs which the human mind is so constituted as intuitively to accept, and be more or less satisfied by. Will any one pretend, that, when acting up to the circular, he has seen a bond which (though inadmissible from want of registration) is nevertheless obvious, genuine, and certified by persons of good name and character, and has rejected it from the record; will any one pretend, we say, that he is not influenced at all by it, and that he decides *solely* on the parole evidence adduced to supply its place? The fact is that such rules as Circular XI either go too far or do not go far enough. In cases where the law demands that the evidence of certain facts shall be in writing, and refuses to receive parole testimony in the point *at all*, if such writing is not forthcoming;* the principle is intelligible, and in some instances may be useful. If therefore the circular provided that not only should a single shop-book or an unregistered bond be inadmissible, but that parole evidence should not be allowed to supply its place, the rule, however hard, would be consistent and so far reasonable. But where the rule only rejects the book or bond, and allows parole evidence instead, its operation simply amounts to this,

* As in the case of a will in English law, when parole evidence is not admissible to shew the intention of the deceased or to prove a nuncupative will.

that it excludes what *may* be bad in order to admit what is certainly worse. It may be urged indeed that when the book is rejected, it affords the court great scope for dismissing claims where it thinks there is a doubt, and the evidence is not perfectly satisfactory. In practice it is not so, and the appellate courts, which are generally over-lenient, always, as far as we know, upset decisions which attempt any action on such a principle. We call attention to the fact that the circular does not forbid the reception of parole evidence, because Mr. Roberts gives Col. Hamilton, the Commissioner of Delhi, credit for 'pertinently' remarking that 'the court is not bound to 'accept parole evidence, if it is statisfied that documentary evi- 'dence can be produced *or ought to have existed.*' The first part of the paragraph is true enough;—but there is no rule in the Punjab which provides that parole evidence cannot be received, when the two shop-books, or a registered bond, ought to, but do not, exist. The Statute of Frauds, and the law as to Wills, contain such provisions in English law, but there are none in the Punjab, and certainly Circular XI contains no such prohibition. On the whole, we think that unless the legislature is prepared to rule the rejection, *in toto*, of claims in certain cases not evidenced by shop-books in both kinds, or bonds registered in form, it would be better to leave the law only permissive and cautionary. A discretion should be allowed to the courts to admit books and bonds as corroborative evidence, but the admission should be accompanied by great cautiousness, and a strict watch over the parole evidence; the courts should also mark their disapproval of the plaintiff's neglect by refusing costs in all cases, where it appears that due diligence in keeping accounts and in providing for the proper evidencing of the claim has not been used. The appellate courts should also be instructed to uphold these principles, and not remand or reverse orders in cases where the lower court has deliberately acted on them.

Having thus briefly noticed the district courts of original jurisdiction and the suits they try, it will be proper to add a few remarks on the action of Small Cause Courts, and especially with reference to the finality of their decisions. Strange to say, Mr. Roberts appears to be opposed to the continuance of these courts, and that too in the face of evidence which would be, to an ordinarily constituted mind, conclusive in their favour. We are glad to see that this has been remarked by the Lieutenant Governor. The Courts of Small Causes *may*, with any other institution, be badly worked, but the remedy for that is very simple, if proper precautions are adopted by Government, who

always take care to appoint the best qualified persons as Judges, —officers who, to a sound knowledge of the principles of law, add genuine conscientiousness, and an earnest desire to find out truth and administer substantial justice. The procedure of Small Causes Courts has all the precision and definiteness which the district courts are so deficient in. The work is disposed of punctually and speedily; parties are not detained long from their daily duties, and the decisions generally give great satisfaction. We believe that the number of false cases which obtain decrees, is very small indeed.

Much is said about the want of the right to appeal from the judgments of these courts, but it must be remembered that a reference to the Judicial Commissioner can be made by the court on points of law in which there is any doubt, and any party who thinks his case has been dealt with wrongly, can apply for re-trial before two Judges. If the grounds of such a petition are *primâ facie* valid, a re-trial *in banco* is always allowed, and we believe that the result is, in the great majority of cases, far more satisfactory than an appeal from the district court, to the Commissioner. As to the popularity of the courts there can be no doubt; not only are they eagerly resorted to, but personal testimony could be produced in abundance to show the general opinion regarding their working. One instance of this is given in the Government letter previously alluded to. Natives value quick decisions, provided speed is not attained at a sacrifice of actual justice, which, there is no reason to suppose, is the case in these courts. It is, therefore, strange to find Mr. Roberts objecting to Small Cause Courts: indeed, we cannot help remarking, throughout the whole Report, the extraordinary eagerness which he exhibits in opposing the introduction of every improvement, and every law which would be really beneficial, and which are urgently called for, while at the same time he is quite ready to propose changes which no one wants, and which, if carried out, would be most mischievous in their results. It appears to be just the same whatever the law is; be it Chief Commissioner's Act or registration law, or procedure code; it has only to be named to call forth the Judicial Commissioner's immediate opposition. In condemning, however, these conservative principles in a province where there is so much to be improved and so little worth conserving, we must not omit to commend to Mr. Roberts' notice really valuable proposal for the decision of suits by periodical sittings of Judges *in banco*, with powers of final disposal.

In the first place, the association of three Judges,—say a Deputy Commissioner and two Assistant Commissioners,—would afford

a much better prospect of an accurate decision than is obtained by letting one Judge decide, subject to an appeal to another Judge who is not much more likely to be right, and certainly has less opportunity for being so than the first. In the next place, the Judges would themselves be much benefited by seeing and meeting with others, and hearing their views and interchanging opinions. An amount of activity in the study of law, and in the prosecution of intelligent discussion and enquiry would be developed, which could not fail to be beneficial. The scheme is one which would be very easy to carry into practice, and it would cause no extra expenditure. We believe that the people would infinitely prefer the judgment of a court so constituted, even though it be final, to the privilege of going, often scores of miles, to undertake the vexatious delays and difficulties of an appeal at the Sudder Station.

It is now time to consider the working of the appellate courts of the Punjab.

From the courts of Assistants without powers and from Tehsildars, an appeal lies to the Deputy Commissioner. This is quite necessary, as often officers, while new to their work, make mistakes, for which an easy and inexpensive remedy is requisite. On the class of appellate courts we have nothing to say, except that they work very well. The same success must be also attributed to the appellate court of the Judicial Commissioner; the judgments of this court are almost invariably sound, clear, and instructive. Appeals to the other chief court, that of the Financial Commissioner,—are not so satisfactory. It is hardly necessary to notice any remarks thereon, as the appellate jurisdiction in suits for land will pass away when the chief court is established. A Financial Commissioner is not necessarily required to be learned in law, and hence, appeals to his court are usually attended with most interminable delay; and much vexatious interference with orders on purely extra judicial grounds, is allowed. Appeals to the court, on every kind of subject, even in executive matters, appear to be admitted without any definite principle whatever.

From all Deputy Commissioners and Assistants with full powers, who are officers of longer standing and greater experience of work, appeal lies only to the Commissioner,—the divisional civil court. It is in these appeals that some improvement is required. Appeals lie in all civil cases, and can be preferred within a limit fixed by law. Commissioners, however, frequently ignore the limit, and take up the case whether legally admissible or not; this, however, is very much less common than it was some years ago. New evidence and new pleas are admitted in appeal; and the appellate courts are extremely and often erroneously

permissive and loose in their treatment of law, and principles of the law of evidence are quite at a discount. It is rare if the appellate court does not direct the reception of evidence, which the lower court has rejected strictly in accordance with the law. But all these points are trifles compared to the inconvenience which results from the indiscriminate remand of cases for re-investigation. We have heard it remarked, that whoever is best at talking and puts on the most affecting appearance of injured innocence, gets the day. He may not, indeed, procure the reversal of the order, but yet it is sent back for 're-investigation.' The same thing happens when the case is rather long and complicated, and especially if there is a good deal to be said on both sides, leaving only a balance preponderating. Cases are also frequently returned for reference to arbitration. If the Court of First Instance does so refer a case, it is informed on appeal that it should decide the issues itself. If, on the other hand, the court goes carefully into accounts, and such like points, itself, on appeal it is ruled that such questions should be settled by arbitration.

We must not be understood to assert that all appellate courts in the Punjab act in this way. There are Commissioners, careful, clear-headed, and of sound judgment, who never return a case unnecessarily, and if they do return it, they present so clear a view of the law, and so luminous an exposition of the defects of the lower court, that the judgment is at once instructive and convincing. It is the utter uncertainty of appellate courts that is so objectionable. There are no definite principles by which these courts are guided;—little or no supervision is exercised over them, and there is no provision whatever made to secure a standard of legal knowledge and experience necessary to the due exercise of appellate functions. Every one qualified or unqualified becomes an appellate Judge in his town, officiating or permanent, by the mere force of circumstances. The Lieutenant Governor has noticed the large number of cases returned for re-investigation, but His Honor should enquire what the eventual results of the re-investigation in the lower courts are; we believe that we are understating the facts of the case when we assert that in more than 50 per cent of cases returned, the lower court adheres to its original order, either entirely or with very slight alteration.

As a general rule, when it does not appear on the face of the record that the investigation has been hurried or imperfect, and where the lower court has come to a distinct finding on a point of fact, that finding should not be interfered with. The original court having the witnesses before it, and being able to note their demeanour, to cross examine and to mark the style of

answer, (all of which are important in judging of native evidence especially) it is much more likely that the court is right than the appellate court which has rarely any but the record before it, and the one sided special pleas of the appellant. We believe that the respondent is not as often heard in support of the lower court's order as he ought to be. The easy reception of new evidence in appeal is also to be deprecated. If a court writes a clear and decisive judgment, one of the parties perceives (perhaps by the aid of a sharp petition writer) that his case has failed from his inability to prove some point or other. He appeals, and having got ready some bazaar evidence on the point in question, repeats that the lower court would not hear his evidence, though he had it ready. In such a case the appellate court should instantly reject the proposed evidence, when it appears from the record that the point on which it is offered was distinctly put in issue by the lower court, and a definite negative finding recorded; and yet evidence like this is constantly accepted, and the case remanded. We could multiply instances, but this would lead us too deep into detail; we have said enough to show that some improvement is wanted; that it is necessary to define the principles of the action of appellate courts, and to make some provision for securing a necessary amount of qualification in the Judge.*

We have thus far noticed the subject dealt with in the Report; it remains only to offer a few remarks on the statistical tables which form the appendix. We have already alluded to the agency by which the records are kept from which ultimately these tables are compiled. We think that some of the statutes, at present collected, are unnecessary; or, more properly speaking, that they are unnecessary in the way in which they are given, though they would be valuable if prepared with reference to classes of suits, and not to all suits indiscriminately taken together. For instance, the fact that the average duration of suits in the province is sixteen days, appears to us of little importance in itself, whereas if the suits were first divided into classes according to their nature, we could learn that the average for suits for real property was so much, suits for contract so much, for parole debts so much, and then we should be in a position to judge whether the procedure and court machinery was good, and whether any class of cases exhibited a too high average.

* The stamp for appeals we think much too low, it might be increased considerably, and it would check vexatious appeals. We think too that a limit should be fixed as to the value of suits. We would admit no appeal (except in real property case) below fifty Rupees

At present we know nothing. An average, that may be very great for a suit in parole debt, may be quite small for a suit of inheritance. A similar classification of suits would give great importance to the statistics of value: we should then get an insight into the usual value of contracts, of houses, of bonds, and of parole debts, in the country, and how far wealth, prosperity, and commercial enterprise are extending their influence in increasing the magnitude and value of the transactions of the people. The present general average shows nothing particular. The classification of suits for these purposes should be broad and simple; it might be such an one as we made for ourselves in an earlier part of this essay. Information is also much needed as to the number of suits in which the decree is executed through the court, and how many decrees are realized by distraint and sale of property. This point has been noticed by Government, and, no doubt, the information will be forthcoming in future years. Another point requiring elucidation has already been alluded to, *viz*, the ultimate result of cases remanded for re-investigation after appeal. On the whole, we think that far too much reliance is placed upon 'averages' as a test of the ability of officers and the efficiency of courts. It is to be feared that some less careful officers think more of getting their cases done so as to appear with 'a short average duration' than of doing real justice, and making exhaustive enquiries. The authorities while insisting on 'averages' foster this evil. But the average is really a very insufficient test of ability. One officer may seem to have a high average, another a low one; the latter therefore gets the credit of being far the best officer; but the facts may be really quite the reverse; for the one may have had chiefly hard cases of inheritance and the like, which always take longer than others, and may also have made good investigations, and sound, well-thought out judgments; while the other officer, praised for rapidity of dispatch, may have done nothing but little cases of parole debt naturally easy, and may have done them most superficially. Sometimes witnesses have to be summoned from a distance, and the delay is unavoidable; the fear then arises that the average will be spoiled, and the case is struck off on default, or got rid of on some technical plea. The Lieutenant Governor remarks on the number of cases struck off the files, and we are very much mistaken if their number is not due, in some measure, to the eagerness for short averages. Before quitting the subject of statistics, we cannot help noticing a puerility which is so strongly put forward, as to become really a curious phenomenon in the civil administration of the Punjab. It may be seen in every year's Report, and seems to

pervade all classes of reporting officers; we allude to the supposed advantage of having a minimum number of suits pending at the close of the year. What the advantage is which so gladdens the heart of the Judicial Commissioner we are quite unable to conceive; we doubt whether the Commissioner himself could give any reason either. Cases are filed on every working day of the year, and hence, taking sixteen days as the average duration of a suit, it follows that a large majority of the suits filed on or after the fifteenth of the month (to say nothing of others still pending from other causes) must be undisposed of at the end of the month. No one seems to object to the number of suits pending at the end of January, June, or November, or May, but as soon as we come to December every one is frantic about the cases pending. Only one officer, the Commissioner of Lahore, has had the sense to see the absurdity of this: as he very justly remarks, not only is there no reason why less cases should be on the file at the end of December than at the end of any other month, but there is reason why there should be more, since the month is full of holidays, and the courts close on the 25th.

If petitions are fairly taken every day, the majority of those filed after the fifteenth will, just as in any other month, be pending. In short, the result of having no cases undisposed of at the end of December, can only be obtained either by great juggling with statistics, or else it is that officers refuse petitions during the last fifteen days of December, a proceeding which is, properly speaking, forbidden; or that law and ministerial officers combine to strike cases off the file without cause, permitting the case to be re-instituted on the re-opening of the court in January. It is also common to receive the suits, but not bring them on the list till January. Thus from a most absurd rule, much practical inconvenience results.

If no pressure were put on the courts to induce them to clear the files, none of this would happen. It is on account of the practical evils which follow, * that we have commented on what would otherwise be a point too ridiculous to notice. We hope that in future years, if the happy result of a clear file is attained on the 25th of December, the Judicial Commissioner will explain for public benefit what advantage results either to the courts or to litigants from this much cherished *optimatum*.

In concluding our notice of the Report we will only mention one desideratum as to its matter: and, that is, that the opinions of

* We do not mean to say that real injustice as to the merits of the cases in courts is ever perpetrated, but that vexatious delay, and sometimes expense, are inflicted, there can be no doubt.

Commissioners and Deputy Commissioners should not be excluded from print. After the general report of the Judicial Comissioner, the reports of divisional Judges follow: but they appear to be carefully weeded of all opinionative and speculative matter, there being only the statistical paragraphs which occupy space to no purpose, since this information can be gathered from the tables in the appendix. The Judicial Commissioner is not obliged to assent to all the opinons broached; but the thorough ventilation of the subjects treated of in the Report is most desirable, and the matter is sure to be interesting. We are glad to see the usual formula of praise for each officer omitted in the Report. Officers, however, who really do distinguish themselves, should have their services acknowledged, but the laudatory platitudes of former years, bestowed on each and every officer indiscriminately, were simply ridiculous. It is time, however, to draw to a close our somewhat lengthy survey of Punjab Civil Justice. In summing up the substance of them, we would call attention to the extreme simplicity of most of the improvements required. Some of the objections made to the existing state of things are upon points so apparently trivial, that they would have been hardly worth noticing, did not these little matters come in the end to kindle a great fire of inconvenience. There are, no doubt, one or too great questions affecting the future civil administration of the province, and they require deep thought and full discussion. The majority of improvements, however, are simple and easy of introduction. That such is the case, no doubt, argues that the main principles of the system are right, and this we think no one, acquainted with the Punjab, will deny. We believe the justice is, on the whole, as fairly and as easily administered both to Europeans and natives, as it is in any of the courts of the regulation provinces; and that if the improvement suggested were carried out and a good procedure law introduced, they would be much better. We have found reason occasionally to differ from Mr. Roberts in regard to the views expressed by him in the Report, but we have no hesitation in subscribing to his opinion that the statistics of the province prove that there is to be found throughout the courts of the Punjab 'zeal, industry and attention, and a commendable and not 'unsuccessful endeavour to do substantial justice.' But the way to become better still is to advance with advancing civilization, to be a little before, rather than much behind the time; to be ready to weigh fully and impartially the merits of every proposed improvement, not allowing prejudice or habits to oppose a change where reason and expediency alike call for it. All institutions are either good or bad:

if there is some good in any institution, and also much evil, and if the inconvenience arising from changing it is greater than the good expected from the change, then that institution must be considered for practical purposes as good, and be left alone, but if any arrangement is in practice bad, either positively or comparatively, let no prejudice or conservative principle oppose its change: the maxim for the Punjab, as indeed for every other community in a state of progress, is that which Tennyson has committed to a single stanza.

'Not clinging to some ancient law,
'Not mastered by some modern term,
'Not swift, nor slow to change, but firm,
'And in its season bring the law.'

ART. III.—1. *Story's Commentaries on Equity Jurisprudence.*

2. *Spence's Equitable Jurisdiction of the Court of Chancery.*
3. *Tudor's Leading Cases in Equity.*
4. *Smith's Manual of Equity Jurisprudence.*
5. *Batten on the Specific Performance of Contracts.*
6. *Fry on the Specific Performance of Contracts.*
7. *Certain Cases, published in Sutherland's Weekly Reporter.*
8. *Section* 192, Act VIII. of 1859.
9. *Sections* 24, 25, 133, 134, 314, 315, 316, 317 *and* 328 *of the Amended Code of Civil Procedure, published in the Gazette of India of the* 28*th April* 1865.

IF one man make a contract with another and afterwards refuse to perform it, there are two modes of satisfaction, of which the *contractee* might avail himself against his *contractor*. He might bring an action for damages for breach of contract; or he might sue for the actual fulfilment of the contract itself. The latter remedy is known by lawyers as the *Specific Performance of Contracts*. This doctrine was discussed at the Session of the Legislative Council during the last cold season (1864-65), in connection with certain Sections proposed to be introduced into the Indian Code of Civil Procedure, and the discussion will probably be resumed at the approaching Session. To those who take any interest in questions of Law Reform, and to the educated Anglo-Indian and native public at large, a short exposition of the doctrine in question may not be unacceptable. We shall endeavour in the following article,—

I. To set before our readers the principles upon which specific performance of contracts is decreed in the courts at home.

II. To point out what has been hitherto done in this branch of jurisprudence in India.

III. To discuss the new Sections of the Civil Procedure Code, which are intended to extend the hitherto limited applications of this doctrine by Indian courts of justice.

I. The specific performance of a contract is a remedy administered at home only by courts of equity. In the courts of common law a suffering party can only obtain damages for the non-performance of an agreement. But equity, in accordance

with a well-regulated and clearly defined judicial discretion, enforces the actual accomplishment of the promise made by a competent party for a valuable consideration. While, however, damages may be recovered in a court of common law in every case of breach of contract, in which an action can be sustained under the practice and procedure of these courts, it is not every case of non-performance of an agreement that equity will hold to require her interference, and the peculiar remedy of specific performance. The broad rule may be thus laid down: *Specific performance of those contracts only will be enforced for the non-performance of which damages are not a sufficient compensation.* This will be better understood from a few examples. Chancery will not entertain suits for the specific performance of contracts for the sale of stock, shares, or chattels, because in case of a breach of such a contract other stock or shares can be purchased in the market, and if more than the contract price have to be paid, the difference can be recovered in an action for damages, and complete compensation obtained in a court of common law. Similarly, if a man contract to deliver so much wheat, or oil, or wine, and fail to fulfil his contract, the wheat, or oil, or wine, if of an ordinary kind, could be purchased elsewhere, and complete satisfaction recovered in money damages. But suppose the wine were of some rare vintage, which could not be had in the market and which was seldom or ever sold, here specific performance of the contract of sale would be decreed, because inasmuch as the wine could not be purchased elsewhere, damages would be no compensation for the breach of contract. Again, in the case of a contract for the sale of an estate, its situation, soil, and local advantages, the fine view from the house, and the fishing and hunting facilities, might give it a peculiar value in the eyes of a purchaser, so that damages, which would enable him to buy another estate of the same money value in the market, would be no real compensation to him for the loss of the one which he desired to possess. Naboth's vineyard is an example of a desire, by no means rare, to possess some particular plot of land in consequence of its real or fancied worth in the eyes of a would-be purchaser: and where the purchase is agreed to on any terms—fair and square to both parties,—equity will step in and enforce the specific performance of the contract. Similarly, if a contract were entered into for the sale of an indigo factory in Tirhoot or a tea garden in Dehra Dhoon, money damages for a breach and refusal to fulfil the agreement might enable the plaintiff to become the owner of a factory in Nuddea or a garden at Darjeeling, but then he might not wish to risk his capital in either of these places, and might be deprived of an investment for his money, unless the contract were specifically enforced.

Equity will also interfere to enforce specific performance, where the legal remedy is wholly wanting or is insufficient. The strictness of the common law forms at home would often leave an injured party without his remedy, did not courts of equity exist to supplement the system of the courts of law. The latter regard money as the measure of every loss, a principle which does not hold true in practice; but equity, by decreeing specific performance, will give what the injured party desires, and is fairly entitled to have. Again, a court of law cannot, like a court of equity, modify its judgment, so as to give complete compensation to all parties: or cannot, without a number of actions, arrange conflicting rights. Specific performance will often entirely simplify matters, and will be directed accordingly. As examples, where the legal remedy is wanting, we give the following: No damages for breach of contract to assign a chose in action could be had at common law, because such a contract is not recognized except in equity. An agreement evidenced by a bond given to a wife by her husband, or to a husband by his wife before marriage, could not be the subject of an action at common law, after the marriage as man and wife would be held to be one, and neither capable of suing the other; but it would be enforced at equity.

There being no distinction in this country between law and equity; or rather, the courts being all courts of equity, and the administration of justice being in no wise impeded by strict forms, which are fast falling into disuse at home even in courts of law, much of this part of the subject is quite inapplicable to Indian jurisprudence, and may be safely regarded as beside the object of the present disquisition. It becomes, therefore, the more necessary to remember the main principle, which ought to be as applicable in India as in England, *viz.* that specific performance should be decreed of those contracts only, for the breach of which money damages cannot afford complete compensation.

In order to give some idea of the manner in which equity proceeds in the application of the doctrine of specific performance, and of the grounds on which a discretion of refusing or granting this remedy is exercised, we shall give examples of cases in which specific performance has been decreed or withheld, and the reasons for the order in either case. Before doing so, however, it must be remarked that the remedy is mutual, and where equity will grant specific performance at the suit of the contractee, it will also be ordered at the suit of the contractor.

We have already seen why specific performance of a contract for the sale of stock or Government Paper will not be decreed. The same rule applies to shares, but where the shares in any undertaking are limited in number, and are not always to be had

in the market, a contrary rule would apply for the same reasons. Specific performance will be enforced with respect to unique chattels, *e. g.*, the celebrated Pusey-horn, an ancient silver altar piece having a Greek inscription and dedication to Hercules, an heir-loom, a Queen Anne's farthing, or a diamond as celebrated as the Koh-i-noor. The general principle applies. No amount of money damages would compensate the injured party. A similar article could not, in many cases, be procured, and in other cases it could not supply the place of the object of desire. Again, where the party failing to perform his contract can supply the article in such a way as is essential to the requirements of the other party and no one else can, specific performance will be decreed. As, for instance, if a person, under an agreement to complete the new High Court buildings within a certain time, were to contract with an importer of teak timber for the delivery of a quantity of this wood for the floorings, and the latter being offered a higher price for his cargo to supply a ship-builder's yard, were to refuse delivery at a season when there was no prospect of other ships arriving in the port with the same timber.

Agreements to enter into partnership, which do not specify any limited term for the existence of the partnership, will not be specifically enforced. A partnership being, unless otherwise agreed, dissoluble at the wish of either party, the interference of the court would be useless, as such a relation might be dissolved the moment it was entered into. Where, however, the agreement is for partnership for a fixed length of time, and to furnish a fixed share of the capital, the case is otherwise, and specific performance will be decreed.

Agreements for hiring and service will not be specifically enforced, the relation created by these contracts being of too personal and confidential a character to be created against the will of either party. For the same and other reasons, agreements to marry would probably not be decreed to be specifically performed. Where the court could have no means of enforcing its own orders, as in the case of an agreement for the manufacture and sale of a *secret* medicine, specific performance will be refused. The recipe being a secret, the court could do nothing. The sale of the good-will of a business is another example of the same kind. Voluntary contracts, as they are called, when no consideration has passed from the party seeking performance, will not be enforced. As, for example, if a man were to promise to give another a horse or a diamond ring.

Contracts or covenants which are against public policy or morality will not be enforced; as, for instance, if a member of the Civil Service or an officer in the Army were to assign his future

pay. It would in this case be contrary to the honor, dignity, and interest of the State, that its servants should be in danger of being reduced to poverty by anticipating their resources. Assignments, which involve champerty maintenance or the transfer of mere naked rights to litigate, would not be enforced. In some of these instances no damages could be recovered at common law, as these contracts could not be sued on.

The subject we are discussing will become still plainer from considering the defences which may be set up in answer to a Bill for specific performance. These defences are defined and illustrated by Mr. Fry in his able work to the number of twenty-four. Some of them, however, run into each other, and are not so much distinct defences as different divisions falling under the same head. Following Mr. Fry to some extent, we shall, however, distinguish the whole number under two separate classes. Under the first class will fall those which go to show, not so much that the contract should not be specifically enforced, as that there is no completed legal contract existing between the parties, which can be enforced. Under the second class will come those defences, the *gist* of which is that for some good reason an existing contract ought not to be *specifically* enforced. The defences of the first kind will, in many instances, afford a good answer to an action for damages, while it will be different with respect to those of the second kind. This, however, is by no means meant to be a very accurate statement, as there are many cases which will fall on either side of the line. The defences falling under the first class are as follows:—

I. The non-conclusion of the contract.
II. Incapacity to contract.
III. Illegality of the contract.
IV. Statute of Frauds.
V. Fraud.
VI. Defect in the subject-matter.
VII. Failure of the consideration.
VIII. Non-performance of conditions.
IX. Rescission of the contract.

I. It stands to reason that unless it be shown that the contract was concluded between the parties, there is no contract which can be specifically enforced. It must be clearly shown that the contract was concluded. If there be any doubt on the point, specific performance will not be enforced, though an action at common law may he brought in such form as the plaintiff chooses to select. As to what constitutes the conclusion of a contract, that will be specifically enforced; the law is generally the same as to contracts in general, only that it is more strictly applied. Proposal and

acceptance of the *very* terms proposed without any alteration constitute a binding contract. If any change is made, there is no contract, because both parties do not agree to the same thing. A offered to purchase a house on certain terms, possession to be given on the 25th July. B agreed to the terms, saying he would give possession on the 1st August. Held that there was no contract. The most important kind of contract by proposal and acceptance connected with our present subject is, when a promise or merely a representation is made on one side, and acts are done on the other side, on the faith of this promise or representation. For instance, when the father of a young lady told a suitor of his daughter that she was entitled to £10,000 at his death, and it turned out that she had only half this amount, specific performance of this contract was enforced by recovering the other £5,000 from the father's estate. The representation must, however, be clear and absolute. If a father were to say that he *might* allow his daughter £ 10,000 at his death, or that it should be left to his own honor to allow this sum, there would be no binding contract, which could be specifically enforced.

II. *Incapacity to contract* is a question which involves the same discussion as at common law. Minors, lunatics, and married women, under English law, cannot make a binding contract. There is, therefore, no contract which can be specifically enforced. With respect to minors indeed a slight distinction must be made. They can sue, though they cannot be sued, upon contracts made with them. But specific performance will not be decreed, because the remedy would not be mutual. In addition to the incapacities to contract, which would furnish a good defence at common law, equitable incapacities must also be regarded in treating the present subject. Equity holds those incompetent to contract, who stand in fiduciary relations to each other, *e. g.* trustee and *cestui que* trust, guardian and ward, principal and agent. Specific performance of contracts between such would therefore, not be decreed, unless in very rare and exceptional cases.

III. The *illegality of the contract*, if proved, would of course be a bar to any rights being enforced under it. *Ex dolo malo non oritur actio.* The burden of proving this defence falls, of course, on the party impugning the legality of the transaction. The grounds, on which a contract would be held illegal in a suit for specific performance, are generally the same as would support this defence in any other action.

IV. The *Statute of Fraud* is a defence which we shall not here notice, as there is no law in India, which requires contracts

to be put into writing. The law of Registration, indeed, might involve not dissimilar questions, and the non-registry of a contract, which was by law required to be registered, would, doubtless, be a good defence to a suit for specific performance. Whether part performance and some other acts, which have been held by the Court of Chancery to take a contract out of the Statute of Fraud, would have the same effect with respect to the law of Registration, is a discussion involving too nice points for our present purpose.

V. *Fraud*, when proved, vitiates a contract either at law or equity. Fraud may be waived, when the waiver is made with a full knowledge of all the facts. This defence requires no particular notice in connection with our present subject.

VI. *Defect in the subject-matter of the contract* is a defence involving almost the same points when pleaded in a suit for specific performance, as when pleaded in an action at law. Defects are of two kinds, *patent* and *latent*. Patent defects are no ground for refusing specific performance while latent defects are. To render a defect patent, says Mr. Fry, it must be an obvious and unmistakeable object of sense. If a man buy green cloth for scarlet, he has no one to blame but himself for not using his eyesight. With respect to *latent* defects, a defect known to the vendor but unknown to the purchaser at time of sale, will be a bar to specific performance: but it will be otherwise where the defect was unknown to both vendor and purchaser, as in a case which came before the Calcutta Small Cause Court some months ago, in which a person had sold what he had purchased as a Manton's gun and believed it to be so, but which was in reality a native made gun with that part only genuine which bore the name of the celebrated maker. To this rule, however, there is one exception, which has of late years been sanctioned by judicial authority. If the vendor be a person whose knowledge by reason of his trade or calling ought to be a guarantee that the article sold was what it was represented to be; as for instance, in this case, if the vendor were a gunsmith, the rule would not hold.

VII. *Failure of the consideration* may arise either by the existence of the subject-matter of the contract being determined, or by such injury thereto as will seriously damage the value. When a contract of sale has been finally concluded, the thing sold remains entirely at the risk of the purchaser. But any loss accruing before the final conclusion of the contract falls on the vendor. If a horse bought at the mart were suffered to remain for a day or two, and died on the following day, the loss would be that of the purchaser, even though he had never used the animal; unless indeed death resulted from the fault of the

stablekeepers, or from some antecedent cause covered by a warranty. An agreement for the sale of a life annuity was concluded in England on the 28th February, the annuitant having died abroad on the 6th February. Such a contract could not be specifically enforced. There was, in fact, no contract, as the subjectmatter thereof was not in existence at the time of making the agreement. Similarly, where goods at sea were sold, which, before the time of the contract, had been damaged, and sold in a foreign port. Where there is a contract to do something which is legal at the time of contracting, but becomes illegal by statute before the time fixed for performance, the contract will not be specifically enforced.

VIII. *Non-performance of the conditions* is another defence, which might also be pleaded to an action of damages at common law. When the performance of any one stipulation is clearly within the intention of the parties, a condition precedent to effect being given to the rest of the contract; until the performance of such stipulation, the contract does not become absolute, and cannot be specifically enforced. Where companies have contracted for the purchase of certain land for railway purposes, and the making of the railway has been afterwards abandoned, it has been held that the making of the railway was a condition precedent to the fulfilment of the contract, and the abandonment of the line a good defence to an action for specific performance.

IX. *The Rescission of the contract* might also be pleaded in an action for damages. If the contract has been rescinded, it no longer exists to be specifically enforced, and the breach of what does not exist, cannot be the ground of an action for damages. The contract may be rescinded by consent of parties, or by what is called *novation, i. e.*, by entering into a perfectly new contract which supersedes and puts an end to the old one. The intervention of a new person or of a new term may be such a novation as will extinguish the former contract. Where a stipulation is introduced into a contract, that on the happening of a certain event, it will be void; this is generally construed to mean that the contract becomes voidable at the option of the party injured by the happening of the event, so that if he take any further steps amounting to a waiver, the contract will not have been rescinded, and may be specifically enforced.

We now come to the second class of defences, which are as follows:—

I. The incompleteness or uncertainty of the contract.
II. The want of fairness or hardship of the contract.
III. The inadequacy of the consideration.
IV. Want of mutuality.

V. That the contract is *ultra vires*.
VI. Misrepresentation.
VII. Mistake.
VIII. The incapacity of the court to perform part of the contract.
IX. The want of a good title.
X. Default of the plaintiff, or acts done in contravention of the contract.
XI. The incapacity of the defendant to perform his part of the contract.
XII. The lapse of time.

I. *The incompleteness of the contract* as distinguished from the *uncertainty of the contract* is thus explained by Mr. Fry. Under the former head fall those cases where there is the absolute want of some term of the contract; under the latter those where it is not the entire want of the term, but the want of sufficient exactitude in it. The completeness is to be ascertained with reference to the time at which proceedings for specific performance are commenced. Where the want of completeness arises from the default of the defendant, as in the case of an annuity for three lives to be named by him, and he would not name them, this will be no good defence. In this case the plaintiff was allowed to name them, and specific performance was then enforced. The subject-matter of the contract, the parties thereto, the price and the terms, must all be stated in order to constitute completeness. With reference to the subject-matter, the maxim *id certum est quod certum reddi potest*, applies, and it will be stated with sufficient certitude if it can be understood from the description, even coupled with extrinsic evidence to show what is the subject of the description. 'Mr. Ogilvy's house' would, therefore, be sufficiently complete. Evidence could be adduced to shew what house was meant. With respect to the price, '£1,500 less than any other purchaser would give' was held not to be sufficient. An agreement to sell at a price to be fixed by two valuers would be complete enough, unless the valuers failed to agree, and there was no provision for appointing an umpire, in which case the contract could not be specifically enforced. But if the agreement were to sell at a *fair price*, the court would ascertain what would be a fair price. Incompleteness has been held to exist—where an agreement for a building lease did not state when the term was to commence, and when it did not state the length of the term—where it was not stated from what time an increased rent was to commence—where a contract for a partnership was silent as to the amount of capital to be provided—where a contract for a lease of lives neither named the lives nor settled by whom they

were to be named. Instances of the uncertainty of the contract are—where Mr. Kean was under an engagement to perform at a theatre, but nothing was stated as to when he was to perform or in what character—where marriage articles were prepared by a Jewish Rabbi in an obscure form said to prevail among the German Jews—where there was an agreement for the sale of land for building purpose, but there was a doubt about the plan to be incorporated into the deed—where there was an agreement to give the plaintiffs accommodation for the sale of their articles in the defendant's refreshment rooms, and to furnish them with the necessary appliances. With respect to the defence of incompleteness or uncertainty, it must be remarked, that a decree for specific performance is an order to do a certain thing, and there must be no doubt about the thing to be done, while an action for damages demands reparation for the non-fulfilment of a contract about the terms of which, if it has not been fulfilled, there is nothing to be gained from discussion. In the one case a positive, and in the other a negative, proposition is to be maintained, and the former requires clearer proof than the latter.

II. *The want of fairness and the hardship of the contract* may be thus distinguished. The former has reference to existing circumstances at the time at which the contract is entered into, while the latter looks more to the results accruing from these circumstances being what they might reasonably be expected to be, or otherwise. Want of fairness and hardship must, however, be both equally judged of with respect to the time of making the contract, and subsequent events, wholly unlooked for, cannot enter into the calculation. The unfairness may be either in the *terms* of the contract itself, or in the *circumstances* under which it was made, as when one person takes advantage of another, who is intoxicated or under some undue pressure, to obtain his consent to an unfair bargain. When one of the parties knows and the other does not know: or when one of them suppresses a fact, which, if known to the other, would entirely alter his intentions, this will constitute unfairness. If A sold to B all his interest in a certain cargo at sea, both being aware that the ship had experienced rough weather, and *might* possibly have been lost, though there was a chance of her coming safe to port, this would be a good bargain. But if A knew for certain that the ship had been lost while B did not, this would be unfairness which would be a bar to specific performance. In the former case one bought and the other sold what *might* be worth nothing; but in the latter case, though B bought what *might* be worth nothing, A sold what *was* worth nothing. Where a contingency exists, it must be such to both parties. If one

views it as a contingency while the other knows that it has been reduced to a certainty, this will constitute unfairness. The mental incapacity of the parties, though falling short of insanity, their age, poverty, the absence of proper advice, and other such matters, will be regarded in judging of the fairness or otherwise of a contract. Again, where the enforcement of a contract will cause injurious results to third parties, this will be held to be *unfairness* sufficient to stay the court from interfering. Turning now to the hardships of the contract, hardship is of two kinds—patent and latent. Where it is the result obviously flowing from the terms of the contract, which both parties have entered into with equal means of knowledge, the court will be very reluctant to admit the plea. Where, however, the result is not an obvious one, and it arises from something collateral and so far latent, that it could not have been present to the minds of the contracting parties at the time of making the contract, the case is different, and the court will accept the defence. The leading case as to the hardships of the contract is *the Duke of Bedford* vs. *the Trustees of the British Museum*. The Duke resided in Southampton, afterwards called Bedford House. In 1675 he conveyed to a Mr. Montagu adjoining land for building a mansion, Mr. Montagu covenanting with the Duke not to use the land in a particular manner, so as not to interfere with the Duke's enjoyment of the adjoining lands. Subsequently, these lands of the Duke were covered with buildings, and Southampton house pulled down to make way for streets and buildings, and thus the object for which the covenants of 1675 had been made, ceased to exist. When a subsequent Duke of Bedford sought to restrain the trustees of the British Museum, who claimed under Mr. Montagu, from using the land in a way at variances with these covenants,—sought, in fact, specifically to enforce those covenants,—hardship was considered a good defence.

III. The *inadequacy of the consideration* is a question which courts of law will not enter into, but in equity it will be considered, when it is so great as to be an evidence of *fraud*. Where, however, it does not amount to an indication of fraud, it will be no ground for relieving a man from a contract which he has wittingly and willingly entered into. To use the words of Lord Eldon, 'unless the inadequacy of price is such as shocks the conscience, 'and amounts in itself to conclusive and decisive evidence of fraud 'in the transaction, it is not itself a sufficient ground for refusing 'a specific performance.' Where an estate worth £3,500 was sold for £5,000, the inadequacy was held not to be great enough to be a bar to specific performance; but where land was sold for ten times its value, as the condition of a loan required by the

purchaser, a poor and illiterate man, in order to prosecute a good claim to some valuable property, inadequacy of the consideration was held a good plea to a suit for specific performance. The adequacy or inadequacy of the consideration must be judged of, with reference to the time at which the contract was made, and not with reference to subsequent events.

IV. *Want of mutuality* exists where the contract is capable of being enforced by one of the parties, but not by the other. The simplest instance is a contract with a minor, who can sue at law while he cannot be sued upon an agreement made with him. Specific performance of such a contract would be refused to the one party against whom the other party could not have the same remedy. The mutuality must be judged of with reference to the time at which the contract was entered into. It will be no valid objection that the defendant subsequently lost his right to enforce the contract against the plaintiff. One very important exception to the above rule is, where the vendor not having the whole interest he agreed to sell, and the vendee not knowing this fact, the former cannot enforce specific performance against the latter, yet the vendee can insist on having all the vendor has to sell with compensation for the difference.

V. That the *contract is ultra vires* is a defence restricted to cases, in which one of the contracting parties is a corporation. Corporate bodies created for special purposes can contract only with special advertence to the purpose for which they were incorporated. Other contracts being in excess of their powers are void, and cannot be specifically enforced. A railway company is bound to employ its funds for the purposes provided by the Act to which it owes its existence. A contract to build docks, or improve the navigation of a river, would be *ultra vires*, unless these works were very clearly connected with the railway, and contemplated by the Act passed for its construction. If a company were incorporated by an Act of the Supreme Council for the reclamation of the Salt Lakes near Calcutta, a contract by such a company for the construction of wet docks at Kidderpore, or for bridging the Hooghly at Howrah, or for irrigation works in Cuttack, would be *ultra vires*, and could not be specifically enforced.

VI. *Misrepresentation* will be a good defence, when the person setting up this plea has been induced to enter into the contract through reliance on a statement actually untrue, which the other party, knowing it to be false or not believing it to be true, made for the purpose of bringing about the contract, which becomes an unfair one, in consequence of the fact stated being otherwise than represented. Where a person states what he believes to be true, but which is not so, both parties having equal means of

knowledge, this will not amount to a misrepresentation. It would be no defence to an action at law on a contract, that a person having no direct intention to deceive made a random statement, which afterwards turned out to be incorrect. It is otherwise at equity, where a man making a statement must be reasonably satisfied of its correctness. It is necessary that the statement which amounts to a misrepresentation should have been actually relied upon by the other party. If he have resorted to other means of knowledge, and have relied on the result of his own enquiries, he cannot set up as a misrepresentation a statement upon which he did not depend when making the contract: and, even further, if a purchaser has means of knowledge within his power, and neglects to avail himself of them, he will be debarred from this defence. Misrepresentation differs from fraud in this, that the former may be the result of want of proper care, and may be made heedlessly from no bad or dishonest motive; while the latter implies a corrupt and dishonest intention.

VII. *Mistake*, to be a good defence, must be mistake as to *facts* and not as to *law*. In equity as well as at common law, the maxim *ignorantia legis non excusat* is followed. The mistake may be that of one or both parties. Where it is on the part of the defendant who would be the sufferer, it will be a good defence, if the plaintiff have in any way contributed to it; if it be the result of undue influence, mental imbecility, surprise, or confidence abused. Even in cases where the mistake is purely due to the defendant himself, the court will refuse to enforce performance, where the contract is clearly one which he would never have entered into, had he not labored under the mistake, and where an opportunity was wanting for that due deliberation, which in ordinary cases would have obviated such a result. Where an agent went into an auction-room, and having heard the description of a lot different from that for which he was employed to bid, but was under the impression that it was the same, and had it knocked down to him, specific performance was refused. The agent might certainly have informed himself that the lots were different, but he acted in haste and without much time to set himself right. Where the mistake is on the part of the plaintiff alone, he will not be allowed to correct it, and then enforce the contract. Where both parties to the contract were at the time of contracting in error as to the subject-matter of the contract, this will void the contract. Where the mistake is not as to the subject-matter of the contract, but in the reduction of the agreement to writing, the court will interfere to correct the error. Where both parties have

made a mistake, but not about the very subject-matter of the contract, the contract will stand, and may be specifically enforced.

VIII. *The incapacity of the court to perform part of the contract* will in general be a good ground of defence, so as to prevent the court from interfering to enforce the other part. Where however the contract is *divisible,* so that one portion of it could stand without the other portion, an exception will be made. In many of the reported cases, however, the exception is rather apparent than real, as there are two or more separate contracts, instead of portions of one divisible contract. Where, owing to the default of the defendant, who sets up this defence, any portion of a contract cannot be performed, except in some rare cases, the court will hold the contract divisible, and enforce performance of that portion which the defendant can perform; as, for instance, where the defendant only possessed a part of the interest which he contracted to sell, he would be compelled to convey as much as he possessed. It was once held that when the positive part of an agreement could not be performed by the court, it would not enforce the negative part by injunction; but this is no longer law; and recently where a person had entered into an agreement to sing at a theatre, though the court could not enforce this agreement specifically, it granted an injunction to prevent him singing in any other theatre than that in which he had contracted to sing.

IX. *The want of a good title* is a defence set up by the purchaser of land, when the vendor seeks to enforce the contract of sale, and the former maintains that the latter has not made out a sufficiently good title to give him a right to specific performance, the court will not compel a man to become an unwilling purchaser of property, from which there exists a reasonable doubt, that he might be ousted by some one possessing a title superior to that of his vendor. It will not be necessary to go very deeply into the question, 'what title will be sufficiently doubtful to warrant the court in refusing specific performance.' The intricacies of the English law of land do not exist in this country; and when the Registration Act has been some time in operation, the investigation of title in India will not be a very difficult matter.

X. *Where default exists on the part of the plaintiff, or where he has acted in contravention of the contract,* there will be a good defence to a suit for specific performance. Where there were certain acts to be performed by the plaintiff as preliminary to the contract, he must shew very clearly that he has performed, or was ready and willing to perform, those acts. Otherwise there will be such default as will constitute a valid defence; and so also where the performance of these acts is not absolutely a con-

dition precedent, but relates to certain representations as to future acts made at the time of contracting, and upon the faith of which the contract was entered into. There will, however, in this latter case, be a distinction made between the essential and non-essential terms of the contract, and default in respect to such as are non-essential and unimportant will not be a ground for refusing specific performance. When after the agreement to contract, the plaintiff has so dealt with the subject-matter of the contract as to diminish its value, this will be a valid defence. The damage or injury resulting must however be real. A trifling injury will not be sufficient to enable the defendant to evade performance. Where waste has been committed: where the land sold has been dealt with in an unhusbandman-like manner: where the vendor of certain property tendered the purchaser his deposit, demanded back possession, drove the purchaser's stock off the estate, and gave notice to the tenants not to pay rent to him, there was held to be a good defence to a suit for specific performance.

XI. *The incapacity of the defendant to perform his part of the contract* is a defence founded upon the necessity of the case. A man cannot be compelled to do that which he cannot do. This defence differs from some of the others in this, that the capacity or incapacity is judged of, not with reference to the time of contracting, but with reference to the time at which performance is sought. If a man contract to do that which he at the time unable to do, but subsequently acquires the power of doing, he will be compelled to perform his agreement, when he is able to do so. Where the incapacity concerns a non-essential term of the contract, the court will often modify it and decree performance of a contract, which differs in no respect in its *essential* particulars from the original one. Sometimes an agreement is in the alternative; and when one of the alternatives is impossible, it becomes a question whether the other should be enforced. Mr. Fry has very carefully collected the rules on this point which are as follows: *First*, where, at the time of contracting, one alternative is void or impossible, the other alternative must be executed. *Second*, where one alternative is rendered subsequently impossible by the act of God, the other need not be performed. *Third*, where one alternative becomes impossible by the act of the other party, the other alternative will be discharged. *Fourth*, where one alternative is presented by the act of a stranger, the other must be performed.

XII. *The lapse of time* is the last defence we shall consider. This is a question quite distinct from the effect of the Statute of Limitations, which holds good equally at equity as at common law. In order to claim the assistance of the Court of Chancery, a party must, in the language of Lord Alvanley, show himself

ready, desirous, prompt, and eager. The delay of either party in not performing his part of the contract, or in not prosecuting his right to the interference of the court by the filing of a bill, or in not diligently prosecuting his suit when instituted, may, says Mr. Fry, constitute such *laches* as will disentitle him to the aid of the court, and so amount, for the purpose of specific performance, to an abandonment on his part of the contract. At law, time is always of the essence of the contract. So also it will be at equity, whenever it appears to have been part of the real intention of the parties that it should be so, and not to have been inserted as a merely formal part of the contract. But where it is merely a formal part, specific performance will not be refused on merely technical grounds. Where one party is willing to proceed, and by notice or otherwise intimates this to the other party, who remains inactive, this will constitute such *laches* on the part of the latter, as to be a good defence to a suit for specific performance. What is sufficient delay to be taken cognizance of by the court, will depend, in no slight degree, on the circumstances of each particular case. In contracts relating to *mines* time is generally essential. Their value is constantly changing in the market. And the nature of all transactions connected with them is so precarious, that the lapse of time immediately concerns them. To give further instances, in the old case of *the Marquis of Hertford vs. Boore*, a delay of fourteen months was not considered a bar to the plaintiff's claim. In another case, where the contract had reference to a supply of coal, an article fluctuating from day to day in its market price, a delay of eleven months was held to be fatal.

From the above sketch (necessarily through its briefness very imperfect) of the principles by which the Court of Chancery at home is guided in decreeing or refusing specific performance, it will be manifest that there are well-known rules and settled doctrines, the result of long and able judicial experience, by which the administration of this branch of equity is directed and regulated. 'Equity and good conscience' are the guides laid down for the Indian judicial officer in administering justice. No man of however transcendent ability and with a conscience however good, can work out for himself a system of perfect equity. The study of this one small portion of equity jurisprudence, now before us, will shew how very impossible it would be to administer equity and justice, without benefiting by the learning and experience of those who have built up the system, administered in the English and American courts. Legal education and training are, therefore, a *sine quâ non* for those charged with the duty of administering that shortly-worded, but very comprehensive, code contained in the words 'equity and good conscience.'

II. We now come to the second portion of this article and shall endeavour to point out what has been hitherto done as to specific performance of contracts in India. The old reported cases are very few in number, and for all practical purposes it will be sufficient to commence with the passing of Act VIII of 1859; Sections 191 and 192 of this Act are as follows:—

191. 'When the suit is for moveable property, if the decree be 'for the delivery of such property, it shall also state the *amount* '*of money* to be paid as an alternative, if delivery cannot be had.'

192. 'When the suit is for damages for breach of contract, if 'it appear that the defendant is able to perform the contract, the 'court with the consent of the plaintiff may decree the specific 'performance of the contract within a time to be fixed by the 'court, and in such case shall award an amount of damages to be 'paid as an alternative, if the contract is not performed.'

Now, it will be seen at a glance that these Sections have no pretension whatever to embrace the doctrine of specific performance, as administered in the Court of Chancery at home. The first of these Sections is an adoption to India of Section 78 of the Common Law Procedure Act of 1854, (17 & 18. Vict. Cap. 128.), which is as follows:—

'The court or Judge shall have power, if they or he see fit 'so to do, upon the application of the plaintiff in any action for 'the detention of any chattel, to order that execution shall issue 'for the return of the chattel detained, without giving the defen- 'dant the option of retaining such chattel upon paying the value 'assessed, and if the said chattel cannot be found, and unless the 'court or a Judge should otherwise order, the Sheriff shall distrain 'the defendant by all his lands and chattels in the said Sheriff's 'bailiwick, till the defendant render such chattel, or *at the option* '*of the plaintiff, that he cause to* be made of the defendant's goods 'the assessed value of the chattel: provided that the plaintiff 'shall, either by the same or a separate writ of execution, be 'entitled to have made of the defendant's goods the damages, costs, 'and interest in such action.'

Section 200, Act VIII of 1859, enables a plaintiff, who elects to take the specific moveable, to enforce his option by imprisonment of the defendant, or by the attachment of his property, or by both imprisonment and attachment. Specific performance of a contract, under Section 192, may be similarly enforced under Section 200; but in this respect Indian Civil Procedure finds no parallel in English Common Law Procedure, the only Sections of which relating to specific performance, *viz.*, Sections 68 to 74, of Cap 128, Stat. 17 and 18, Vict., are intended for the enforcement, not of a mere personal contract, but of a

duty of a public or *quasi*-public nature. Section 192, Act VIII of 1859, can moreover only be put into operation, *when the suit is for damages for breach of contract:* so that the institution of a suit for damages is a necessary preliminary to a petition for specific performance. It will not be forgotten that the specific performance of an English court of equity is intended to meet those cases, in which damages are no compensation. Section 192 contemplates one of the defences we have treated of, *viz.*, '*the incapacity of the defendant to perform his part of the contract.*' 'If it appear that the defendant is able to perform the contract,' specific performance may be decreed. It would be difficult to guess at the source from which Section 192 was derived. It embodies none of the principles of equity or common law, and leaves those who have to administer its provisions to draw very largely on the undefined code of 'equity and good conscience.'

The published reports of the Calcutta High Court do not furnish many cases involving the doctrine of specific performance: and as far as an opinion may be formed in this way, it would appear that the doctrine is not very well understood, and not much called into play, in the litigation of this country. We shall notice some out of the few cases that have occurred. In *No.* 91 *of* 1864 *Motee Doss and others, appellants, 2nd August,* 1864 (*Weekly Reporter*, Vol. I, page 4), the plaintiff sued for the specific performance of a contract for the grant of a *putnee* lease made by the manager of certain endowed property. Performance was refused, on the ground, that the manager had no power to make such a contract, as the testator had by his will prohibited any transfer of the property by sale or gift. This decision may be defended on two grounds, *viz.*, on that of the *want of fairness of the contract*, inasmuch as it involved a breach of the trust provisions; or as being *ultra vires*.

In case *No.* 1405 *of* 1864, *Thacoor Sreenauth Sing, appellant, 20th September,* 1864 (*Weekly Reporter*, Vol. 1, page 144), the plaintiff sued for specific performance of a contract for the conveyance of a portion of certain property by the defendant, after the latter had obtained a decree for the same. The Lower Courts had dismissed the claim, on the ground that more than twelve years had elapsed since the time of the contract being made. The High Court very properly set aside this decision, and remanded the case, remarking that the cause of action arose not at the time of making the contract for the conveyance, but at the time when the defendant having obtained a decree for the property was in a position to perform his agreement. This case falls under the examples given above, with reference to the eleventh head of the second class of defences. The defendant

was incapable of performing his agreement at the time of contracting, as he had not obtained a decree for the property. But having subsequently obtained a decree, and being in a position to perform his contract, specific performance would be decreed.

One of the commonest instances of suits for specific performance in this country, is an action to enforce a compromise, which has terminated some former litigation. In the case *No.* 236, *of* 1864, *Ram Sahae Sing, appellant, 5th December,* 1864 (*Weekly Reporter,* Vol 1, page 266), a former compromise of this nature had been made. The defendants had failed to carry out its provision, and the plaintiff, falling back on his original ground of action, had sued for his share of the property in dispute. The High Court held that he could not do this; but they decreed specific performance of the compromise made at the close of the former litigation. Now, this case is remarkable as showing very clearly what is observable in all the reported cases of specific performance, *viz.*, that although Section 192, Act VIII of 1859, only contemplates specific performance, *when the suit is for damages for breach of contract;* yet this portion of the law has become a dead letter, and specific performance has been decreed in suits, where there was no claim for damages for breach of contract. Similar to the case just quoted is *No.* 317 *of* 1864, *Bishnu Coomar Roy, appellant, 23rd February,* 1865 (*Weekly Reporter,* Vol. II, page 208), and also *No.* 129 *of* 1865, *Ram Lochun Bubra, appellant, 4th July,* 1865 (*Weekly Reporter,* Vol. III, page 118.)

In case *No.* 2816 *of* 1864, *Ramtonoo Surmah Sirkar, appellant, 29th May,* 1865 (*Weekly Reporter,* Vol. III, page 64): the plaintiff had advanced a sum of money on a deed of sale stipulating that on payment of a further sum, he was to receive defendant's share of a certain *talook.* The defendant, instead of carrying out his agreement, sold the land to a third party, whereupon plaintiff sued him for specific performance. The case was remanded by the High Court for enquiry into the *bonâ fides* of the second conveyance, the High Court holding that if the second vendee had bought the land in good faith, for a valuable consideration and *without notice* of the first sale, he could not be disturbed in his possession, and that the plaintiff's only remedy would be an action for damages. From this it would appear that the suit was not for damages for breach of contract. Had the action been brought in this shape, the plaintiff's remedy would have been greatly simplified under Section 192, Act VIII of 1859. It will be noticed that the proper defence here to the suit for specific performance would have been the incapacity of the defendant to perform his part of the contract. As however that

incapacity was the result of his own wrong in making a second sale of the property, it would have been a good ground for awarding sound damages.

A case somewhat similar to the last is *No.* 100 *of* 1865, *Shib Kishen Doss, appellant,* 23*rd June,* 1865, (*Weekly Reporter,* Vol. III, page 103). In this case, however, the second vendee had notice of the first sale, and the contract being proved, specific performance was decreed. The question of *lapse of time* also arose in this case. The Principal Sudder Ameen had decided against the plaintiff, 'because he had not caused the deed of sale to be executed by paying the money within the prescribed period.' The High Court, however, rightly held that time was not of the essence of the contract, it appearing from the terms thereof that it was not the intention of the parties that it should be so.

From the few cases above noticed, it will be evident that even in this country scarcely one suit for specific performance can be decided, without the discussion of points involved in the usual defences to such suits under the equity practice of the Court of Chancery at home.

III. It now remains to discuss the new Sections of the Civil Procedure Code, which are intended to extend the hitherto limited application of the doctrine of specific performance by Indian courts of justice. We shall quote these Sections in their entirety as contained in the Amended Code of Civil Procedure, published in the *Gazette of India* of the 28th April 1865.

Section 24. 'If a contract shall have been entered into, which 'involves for its performance *separate or successive acts*, a suit may 'be brought to enforce the performance of any one or more of 'such acts, without waiting for the time when the whole of the 'acts required to be performed under the contract ought to have 'been performed; and the court may order the defendant specifically to perform any one or more of such acts without ordering 'him specifically to perform the entire contract, imposing such 'terms, if any, upon the plaintiff, as shall seem to the court to be 'just.' (S. C. C.)

Section 25. 'The court shall not decree the specific performance of any contract, the complete performance of which is 'necessarily extended over a longer period than five years. This 'rule shall not apply to any contract which shall have been entered 'into before the passing of this Act: provided that the court 'shall not decree the specific performance of any such contract 'for a longer period than five years from the date of the 'decree.' (S. C. C.)

Section 133. 'In any suit brought under Section 24 on a 'contract which shall have been registered under any law for the

'registration of assurances, the court may, on the application of 'the plaintiff at the time of the institution of the suit, and *if* '*satisfied that the contract is capable of being performed by* the 'defendant; that the plaintiff is likely to be materially prejudiced 'by any delay in such performance, and that the application is in 'good faith, make an order, *ex parte*, calling upon the defendant 'within a time to be fixed by the court to perform the contract, 'or to appear and show cause why its immediate performance 'should not be enforced.' (S. C. C.)

Section 134. 'If the defendant shall not, within the time fixed 'by the court, either perform the contract or appear and show 'cause why the immediate performance of the contract should not 'be enforced, and if it shall be proved to the satisfaction of the 'court that the said order was duly served upon him in any of 'the modes of service hereinbefore provided, the court shall 'proceed at once to take such evidence as the plaintiff shall adduce 'in support of his claim, and subject to the conditions contained in 'Section 314, thereupon give judgment and pass a decree on the 'judgment so given as provided in the same Section.' (S. C. C.)

Section 314. 'When a suit has been brought to compel 'specific performances of a contract, if it appear to the court that 'the consideration is adequate, that the contract is reasonably 'certain, that the defendant is able to perform it, and that the 'performance would not impose extreme and immoderate hardship 'upon him, the court may declare that the contract shall be speci- 'fically performed, and decree the same accordingly.' (S. C. C.)

Section 315. 'The court may also declare that, in the event 'of the contract not being specifically performed, the defendant 'shall pay to the plaintiff as damages a sum of money to be 'assessed by the court in substitution for such performance. Such 'damages shall be recoverable at the option and on the application 'of the plaintiff.' (S. C. C.)

Section 316. 'If it shall appear that the defendant is unable 'to perform the contract, or that though he may be able to per- 'form it, the consideration is greatly inadequate, or that the 'contract is not reasonably certain, or that the result of perform- 'ing it would impose extreme and immoderate hardship upon him, 'the court may declare that the defendant shall pay to the 'plaintiff damages to be assessed in such manner as the court 'shall direct. Provided that the court may decree, as liquidated 'damages, any sum that the parties may have agreed should be 'paid, in the event of a breach of the contract without reference 'to the extent of the injury sustained.

Explanations (a). 'The adequacy of the consideration is to be 'judged with reference to the time at which the contract was 'made.'

(b). The certainty required must be a reasonable one, having regard to the subject-matter of the contract, and the circumstances in and with reference to which it was entered into.' (S. C. C.)

Section 317, [*Verbatim the same as Section* 192, *Act VIII. of* 1859, *quoted above*] (S. C. C).

Section 328. 'A decree for the specific performance of a 'contract may be enforced by the imprisonment of the party 'against whom the decree is made, or by the attachment of 'his property, or by both the imprisonment of the party and the 'attachment of his property. The imprisonment and attachment 'may be continued until the party, against whom the decree is 'made, shall comply with the terms of it, or for such time as 'the court shall order: provided that no person shall be im-'prisoned under this Section for a longer period than six months.' (S. C. C.)

Before discussing these Sections we must beg our readers to bear in mind one very important point. The Sections in question were not introduced into the Civil Procedure Code for the purpose of extending to India the general law as to the specific performance of contracts, administered by courts of equity at home, but with the particular object of supplying a substitute for a criminal contract law which has been so long demanded in vain. Whether such a law should have been, or should be, conceded to those who have asked for it as the sole remedy for evils, which seemed otherwise remediless, we shall not here discuss. The point is beside our present purpose, which is to enquire how far the law contained in the above-quoted Sections is adapted for the purpose for which it is intended.

Turning then to the first of the above Sections, (24), we find therein nothing that clashes with the principles of English law. Under this Section a ryot, who had contracted to *sow* and *deliver* indigo or any other crop, and who at sowing time neglected to put in the crop, could be compelled to perform this one of the successive acts for the performance of which he had contracted. That the person with whom the ryot had contracted would thus be benefited, there can be no doubt. Were he compelled to wait till the time of delivery, he would get nothing but a decree for damages instead of the indigo or other crop, which to him is the all important object. A decree for damages involves further outlay of money for its execution, loss of time and trouble, which are seldom, if at all, compensated by the results.

The next Section (25) is evidently intended for the protection of the ryot. The specific performance of no contract will be decreed, the complete performance of which is necessarily

extended over a longer period than *five years*. This provision would seem to invalidate, to render null and void, any contract for more than five years. Now, people in the Mofussil are slow to become acquainted with the provisions of a new law, and many contracts made in ignorance of this Section would thus become of non-effect. Might it not be well to give effect to such contracts for the period of five years, and regard the rest of the term as mere surplusage?

The operation of the next Section (133) is limited to *registered contracts*. But how is the court to be *satisfied* that the defendant is capable of performing the contract, and that the plaintiff is likely to be materially prejudiced by delay in the performance, and that the application is in good faith? The plaintiff will, under the circumstances, have to satisfy the court on these points. If he succeed in doing so, which in most cases will depend on the peculiar ideas of the judge, he will obtain an *ex parte* order calling upon the defendant to appear and show cause why performance of the contract should not be enforced. If the defendant still continue contumacious and neglect to appear, under the following Section (134), the court is to proceed at once to take such evidence as the plaintiff shall adduce in support of his claim, and *subject to the conditions contained in Section* (314), may give judgment and pass a decree. The conditions in Section (314) we shall discuss presently. We shall see that they constitute defences to the suit, and the *onus* of proving them would clearly fall on the defendant. If he does not appear, is the plaintiff to be called upon to satisfy the court on these points? Otherwise how is the court to satisfy itself in the absence of the defendant? It is quite clear, that the plaintiff in all these cases of registered contracts will have to prove as much, if not more than in ordinary cases, and that he will not get his decree a whit the sooner. The law does not prevent *ex parte* proceedings in ordinary cases, and in such cases a decree could be had in less time and with less trouble. There is, however, one point of difference. *Ex parte* decrees in ordinary cases could be set aside in the usual manner, while decrees passed under Section 13 would be final and decisive when passed by Small Cause Courts, (though a new trial might be allowed on the usual terms), and would be open to appeal when passed by other civil courts. We may safely predict that these Sections (133 and 134,) will, if passed into law, be seldom called into action. They will be too slow in their operation for those very cases which they are intended to meet. The time for sowing would pass by, while the case was pending, and the decree would be obtained when it was too late to be of any avail. To make the Sections of any real use, they

should be assimilated to Sections 468 to 471, and an application for the enforcement of the contract should be treated as an application for the execution of a decree, the parties having so agreed in writing on the contract in presence of the Registrar.

We now come to Section 314, which contains the defences which may be set up to the suit, and which may be classified as follows :—

I. Inadequacy of the consideration.

II. Uncertainty of the contract.

III. The incapacity of the defendant to perform his part of the contract.

IV. The hardship of the contract.

In a previous part of this article we have shown the defences which are usual and admitted in a suit for specific performance in the courts of equity at home. We have divided those defences into two classes, the first class containing *nine*, and the second class containing *twelve* defences. A reference to our classification will shew that the four defences contained in Section 314, are four out of the twelve comprised in the second class. The question at once arises, are defendants in suits for specific performance under the new Civil Code to be limited to these four defences? Are they prohibited from pleading 'want of mutuality,' 'misrepresentation,' 'mistake,' or any of the other defences which we have above re-capitulated? That such is the intention of the Legislature we cannot suppose, yet, if such be not their intention, why have a few, out of the ordinary defences in such suits, been selected for insertion in this Section? To those Judges whose knowledge of the doctrine of specific performance will have been entirely derived from the Sections in the code, it will doubtless appear easy enough to apply them to such cases as come before them; but when these cases have been appealed to the High Court, and argued on equitable principles (the truest exposition of which will be found in this article), we apprehend that the application of a portion of a great principle to meet a limited class of cases, will be found to result in confusion, uncertainty, and the dissatisfaction of both parties, for whose interest it was meant to legislate. Either a complete list of defences should be incorporated in the law, or the partial list should be expunged. That no list at all should be given, we think preferable. When the Law Commissioners give us the chapter of Indian Code which treats of *contracts*, we think that the general principles of, and defences in suits for, specific performance, would be well included therein.

The few examples of cases given above, and decided by the Calcutta High Court will have shown already, how impossible it would be to confine the defences in suits for specific performance to the four comprised in Section 314.

It may be said that the object of Section 314 is not to enumerate the defences which may be made to the suit, but to lay down certain points upon which the court should satisfy itself before giving a decree. We cannot, however, coincide in this supposition. All the points are in favour of the defendant, and why the court should be bound to take special steps to protect the defendant's interests any more than the plaintiff's, there is no good reason that we are aware of. It would simply come to this: the court would set up certain defences for the defendant, and then call upon the plaintiff to rebut them.

Section 315 provides that in the event of the contract not being specifically performed, a decree for damages *in substitution of such performance* may be given, such damages to be recoverable at the option and on the application of the plaintiff. This Section is borrowed from Sir Hugh M. Cairns' Chancery Amendment Act of 1858 (21 & 22. Vict. Cap 27.) Only that for the words, *in 'addition to or in substitution for'*, the words *'in substitution for'* alone have been introduced into Section 315. Speaking of damages in addition to specific performance, Mr. Fry remarks as follows:—

'In cases where the principal relief sought by the plaintiff is 'the actual execution of the contract, he is often entitled to certain 'additional relief in the nature of compensation, which can only be 'given by way of damages. * * * * * * * 'I had already remarked on the desirableness of courts of equity 'being clothed with a jurisdiction in damages as incidental to 'specific performance, in order that in the case of contracts 'coming before them for actual execution, complete justice might 'be done to the suitors without their resorting to any other forum.' Do not these marks apply to India, and to the very class of cases legislated for? We will suppose a cultivator under contract neglecting to sow at the time the auspicious shower falls, and compelled by a suit for specific performance to sow three weeks after. The produce of the crop thus sown would very seldom equal, and would, in many cases, not be more than half that of the crop sown with the first shower of rain. Would not this be a case in which damages, *in addition to* specific performance, would be rightly decreed? We could give many other examples, but the intelligent reader will easily find similar instances for himself. The damages are to be recoverable at the option and on the application of the plaintiff. Let us now suppose a decree for specific performance passed against a defendant. Such a decree can be enforced by imprisonment of the defendant, and by attachment of his property. Now, the damages decreed can only be *in substitution of* specific performance. If, therefore, the plaintiff take steps for the enforcement of the

specific performance, the question arises, will he not thus be barred from going for damages; or, *vice versâ*, if he declare for damages, will he not debar himself from having performance of the contract enforced? Suppose he were to attach the defendant's property to enforce specific performance, could he afterwards sell it to get his damages?

Section 316 provides that if the Court find on any of the four points contained in Section 314 in favour of defendant, it shall give a decree for damages instead of for specific performance. In the courts of equity at home if a bill for specific performance were thrown out, the suitor must have recourse to a court of common law to recover damages. It is an advantage that under this Section (316), no second tribunal will have to be resorted to. But, if any of the other defences besides these four be set up and proved, will no damages be allowed, or may they be recovered in a separate suit?

The proviso to this Section is as follows: 'provided that the court may decree as *liquidated damages* any sum that the parties may have agreed, should be paid in the event of a breach of the contract without reference to the extent of the injury sustained.'

There is no enactment that we are aware of in this country, which prohibits the courts from applying the usual law of *liquidated damages* to ordinary contracts. What then can be the meaning or object of this proviso?

It cannot be intended to give a special statutory sanction to what had no need of such a sanction. The proviso must be read with reference to the remark we made above, as to the special class of cases for which it has been intended to legislate. A series of Regulations and Acts* with some peculiar decisions thereon, has left the law on the subject of penalty or liquidated damages, relating to indigo contracts, in a state of the most mysterious uncertainty. It was doubtless for the purpose of doing away with this uncertainty, and of allowing parties to contract at their own option, that the above proviso was introduced. We think the above Regulations and Acts, or at least such portions of them as are connected with this point, should be included in the list of of repealed statutes appended to the Code.

The explanations attached to this Section (316) require no comment. They merely enunciate the ordinary rules on the points in question, which have been stated in the earlier portion of this article.

* Reg. VI, of 1823,
Reg. V. of 1830,
Act X. of 1836,

The next Section (317) is (as has already been remarked) the same, word for word, as Section 192, Act VIII of 1859, which has been noticed above.

Section 328 provides for the enforcement of a decree for specific performance, by imprisonment or attachment of property, or by both imprisonment and attachment. The term of imprisonment is, however, in no case to exceed *six months*. But suppose the plaintiff were, simultaneously with the order for specific performance, to obtain a decree for damages exceeding five hundred rupees, he could (see Section 443) have the defendant imprisoned for two years under the decree for damages, while *six months* would be the limit for enforcing specific performance. For uniformity's sake, ought not the same scale be applicable to both decrees?

All the Sections on the subject of specific performance have been made applicable to Small Cause Courts. The law does not lay down *expressly* what is to be the limit of the jurisdiction of these courts in this class of cases; but doubtless the same limit would apply, as is now by law applicable to the cases tried by these courts, in the exercise of their ordinary jurisdiction. Under the county courts' equitable jurisdiction Act, (28 and 29 Vict. Cap. 99), passed last Session of Parliament, and which came into operation at home on the 1st October last, the jurisdiction of the county courts in suits for specific performance is extended to five hundred pounds, equal to five thousand rupees. The ordinary common law jurisdiction of these courts does not yet extend beyond fifty pounds, equal to five hundred rupees. We would not recommend that the jurisdiction of Small Cause Courts in suits for specific performance should be extended beyond the amount which is their present limit in other cases. Our reason is this, that the class of persons chosen as Judges of these courts, in most instances, is by no means calculated to raise the *prestige* of these tribunals, or to render successful the attempt to introduce into this country a reform, which has succeeded at home beyond the utmost anticipations of its first promoters. The county courts in England have not yet been established twenty years: nevertheless in the teeth of the greatest opposition they have almost yearly increased their jurisdiction, until during the last Session of Parliament, the Act, mentioned above, was passed, which conferred on them all the power and authority of the High Court of Chancery in suits in equity up to the limit of five hundred pounds. There is no good reason why the county court system should not be equally successful in this country. The want of success, which has induced some opposition to the extension of the system in Bengal, is wholly and entirely attributable to the class of

persons appointed to be Judges. Let the appointments be limited entirely to *Europeans* carefully selected, and there will be no lack of success. The judicial training to which young Civilians are now subjected ought to fit many of them for these posts at an early period of their service. Such was the original intention of the framer of the Act, but that intention has never been carried into effect. The separation of the judicial and executive branches, which *must* sooner or later come to pass, could be in this way gradually introduced, and district Judges might be appointed from the Small Cause Court Judges, who had proved their capability for judicial work. The post of Magistrate and Collector involves duties nearly all executive, and daily becoming more so. Fondly as same may cling to the traditions of the elders, Collector-Magistrates, had they the versatility and powers of an admirable Crichton, can never discharge the duties of their executive post, and fit themselves for the judicial bench. These officers have admirable training for the duties of a Commissioner, and, unless in very rare cases, this is the line that promotion should take.

Returning from this digression we have a few words to say in conclusion, with respect to the application of the doctrine of specific performance to that class of contracts, which have been the object of this special legislation. It is very doubtful if a court of equity in England would decree special performance of any contract of the nature of those, upon which the Sections we discussed will operate, if passed into law. Contracts to sow, to weed, to tend with care, and duly deliver a crop of indigo or other produce, partake very much of the nature of contracts for personal service, the difficulty of carrying out which in specie has been admitted by courts of equity, which now decline to entertain suits for the specific performance of such agreements. The duties to be performed by a contracting ryot from sowing time to the delivery of the crop are essentially of a peculiar nature, and would, we think, properly be designated as '*service*,' such as those the specific performance of which has been refused under English equity. The reasons given by able Judges for this refusal to exercise jurisdiction would, we think, apply with double force to those very contracts of which we speak. We would gladly see the doctrine of specific performance extended to India in all its entirety, but until the qualifications of her judicial officers, especially the native portion of them, have been considerably raised above their present degree of elevation, we have some doubts, if this complicated machine, with part of its machinery only in motion, can be successfully applied to do the work required to be done.

Art. IV—1. *Report on the Police of the Province of Assam &c.*, 1864.

2. *Final Report on the Police of the Lower Provinces of Bengal*, 1864.

IN a former article, styled the 'Criminal Administration of Bengal', and in which we confined ourselves mainly to a consideration of the *principles* of the system, we expressed a hope that we might supplement it with one treating of the practical working of that system—and this we now propose to do. If, in considering this subject, we confine ourselves entirely to the new police system, we are sure that we shall do as much as the already tried patience of our readers will endure, and also that we shall take in all the more important and prominent points of our subject.

In much that affects the police as a body, we find that we have been anticipated by a candid and competent writer, whose article on the 'Police of Bengal' appeared in No. LXXXI of the *Review*. We do not, indeed, agree in all that has been therein put forward, but the great detail, into which that paper entered, makes it unnecessary for us to bore our readers, with what would be, to a great extent, a mere recapitulation of a recent article, and we shall, therefore, confine ourselves within short limits in this matter.

In order to defend ourselves from any charge of inconsistency, we must inform our readers that our former article was written many months before it appeared. It had been written a few months before it was forwarded to the *Review*, and a few months elapsed before it was possible that it should appear thereafter. In this interval many changes of a most important nature have been rapidly made in the internal economy of the police. We cannot express any opinion, but that these changes, mainly the work of Colonel Bruce, are all changes seriously for the worse; and with the most sincere disappointment we find ourselves compelled to retract much of the praise which we bestowed on the new system in our previous article, and to admit that the withdrawal of some of the most important items of improvement which we then specified has stultified our congratulations thereon. The police we have to write about now is not the same as that we wrote about before, and can by no means claim the same praise. It

is very much the same as the old police, (as it were a distinction without a difference,) and it must come in for much the same dispraise. To Colonel Bruce's whole proposals (as contained in the books at the head of our article,) we feel the very strongest objections; and against the carrying them out in part we loudly protest. It seems to us as if all its evils had been accepted, while the counterbalancing advantage of increased pay to the native subordinates, is alone rejected. It is with bitter disappointment that we find the conclusion forced upon us that, in the matter of police Bengal has been allowed to drift away from the bright position which opened before it in 1861—to glide into the direction of the old difficulties and dangers which beset it, in spite of the warning beacons erected on them by old experience. This language may be thought too strong. It is *not* exaggerated, and we hold to every word of it.

On the introduction of the new system, great and laudable efforts were made to raise the character of the police as a body. The steps taken were all in the right direction. They consisted in the material raising of pay, and the prospect of a pension; the providing of good *European* supervision to be exercised by men having no other occupation, and who bore in one hand the power of summary punishment, and in the other promotion and reward. Lastly, in the cutting off from the thannah officials, all authority which as a means to do ill deeds might make ill deeds done, but which it was not essential that they should possess. At the same time directions were issued to enlist men of good character, and to treat the police as a respectable and honourable body; while, with a view to securing eligible recruits, schools were opened in which young men aspiring to be future members of the corps are instructed in reading and writing, and in those laws which they are hereafter to aid in administering. These are, indeed, unexceptionable measures, promising the most brilliant results; but alas! this statement, so brave on paper, has been most wofully lopped of its fair proportions in practice. To what extent has Government availed itself of these plans; to what extent has their application been restrained by the circumstances of the country; and to what extent have they been retracted altogether;—in considering all this, we shall find much,—very much, that militates against the new system, and deprives us of very many of the advantages which ought to accrue from it.

It will be impossible to treat fairly of this matter without fully understanding, and allowing for, the condition and circumstances of the country for which a police had to be made. There is no country in the world so happily circumstanced, that it will admit of the application to it of any system which does

not, in some points, depart from or oppose general principles of admitted truth and importance. Very often the application of some of these principles is physically, (or otherwise actually), impossible; and very often, too, the genius and character of a people will raise an equally strong bar, or induce a prudent statesman to abandon a theoretical truth in favour of an admitted defect; as being a wise choosing of the lesser of two evils, and the only means in his power of doing the best as a whole. Everywhere allowances must be made for drawbacks of this nature, but in India very especially so: but more particularly in the matter of police; for there is hardly one local or national circumstance of the country, which tells in favour of its rulers and of order, while they are unusually numerous and important on the other side.

We think that we have sufficiently enumerated the most obvious of these difficulties in our former article; and assuredly our readers do not need to be reminded that when a country thickly inhabited by the criminal-supplying class, is not only of gigantic area, but also extremely difficult to travel in, the most serious obstacles are thrown in the way of justice. When a criminal has the start by a day or two of a police officer who can travel no faster than, (if so fast as), the criminal himself, and who has further to look about with the most delaying diligence for a trail, it is very evident that the criminal must very often win the race against justice. England itself, and at only the beginning of the present century, afforded many and many an example of this. These difficulties are further very materially increased, by the fact that the police are managed and controlled by a few, (a very much too small number), of foreigners, of different colour, religion, and language to their subordinates; and the general community, who are quite curiously ignorant of the natives, who have no intimate intercourse with them, know nothing of their inner life, habits, or feelings, and can't, (as a *very* general rule), understand, or be understood by, any ordinary villager they may come across.

But these evils, great as they are in themselves, are almost illimitably increased by the very peculiar character of the people; by their want of faithfulness to themselves, by the absence of any public feeling among them,* by their carelessness and

* *Note.*—We by no means deny the existence, among educated Bengalees of all classes, of a very decided public opinion, which makes itself heard and felt with effect in Calcutta, and wherever educated natives are assembled in any numbers. But this, though it shews what the public character of Bengal may be, (we hope and believe will be,) hereafter, does not describe that of the present day. Take a Moffussil Zillah, and compare the educated

timidity, their apathy as to wrong, and their indifference to truth. As is the character of a people, so will be the value of their institutions, and the prosperity of the nation. As of individuals, so of nations; those who will not help themselves, no power on earth can help, and the most careful workmanship, spent on worthless material, is but lost labour. The happiness of a nation is not only not *chiefly* in the hands of their rulers, but *it is altogether in the hands of the people*. England, on the one hand, is an example of how a people, eager for liberty and good order, and true to themselves, can win the very highest degree of liberty and good order, in spite of the most arbitrary laws and institutions, and against the most arbitrary power, wielded by strong hands, guided by able heads, supported by the prestige of antiquity and glory, and even by the weight of religion. India, on the other hand, is an example of the political debasement and social misery which befalls a nation apathetic as to their rights and false to themselves, in spite of the efforts of a strong and righteous Government, which honestly and strenuously directs its every thought and action for the liberty, security, and prosperity of its subjects. All sorts of reasons have been given for the failure of all our systems of Indian police. Some say—the root of the evil is among the police ranks, others that it is the thannah officials, others that it is with the magistrates—all sorts of changes and plans are recommended and made in these, but the blot is not there:—it is here,—in the character of the people; and till this is changed, till they learn to appreciate security of person and property so much, that every man shall turn his hand against him who attacks it; till they learn to hate oppression so much that no policeman can hope to show it unprosecuted; and till they learn to regard the false witness as the enemy of public security and of freedom from oppression, we can never have a really good police, or one that can be trusted, and the most that we can require of Government is to give us the best possible, and to let pass *no* opportunity of improving it.

The charge that we have to bring against the Indian Governments from the earliest days of our rule to the present is, that so far from ever having given the country the best system possible under the circumstances, they have never given any that could seem the work of rational beings; and that so far from

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and thinking few, (whose position and influence is, unfortunately, seldom high in the Moffussil) with the thousands and thousands of the unthinking and uneducated who form its population, (and who may be found among its richest landholders,) and not the most zealous friend of the Bengalee will quarrel with our statement that there is no public feeling among the people.

losing no opportunity for improvement, they have, after each promise of improvement, and after having with a view thereto sought for and obtained the clearest exposition of the faults of their system, invariably returned with their eyes completely open to the same system as before, with all its evils. That the English should have started badly is only what was to have been expected. Their ignorance of all things Indian, the extreme character of the difficulties which beset them and the insufficiency of the means at hand for combating them, are a most valid apology for a failure *at the first*. But all excuse of this nature had long ceased to be admissible, before any earnest or serious attempt was made by Government to discharge its primary duty and responsibility, by providing a police which should not only be efficient to protect person and property, but which should *itself at length cease to commit outrages on both*. That nothing of this sort was attempted till 1837 constitutes, perhaps, the most serious and unanswerable charge that can be brought against the system of Government which allowed such a thing to happen. Its bitterest enemies need desire to bring no more damning charge, than that the Company's Government, having formed a police at the outset of their career, under circumstances which admittedly precluded all hope of its being worth anything, and which constitute the excuse for its failure, deliberately retained that police on the same system for more than half a century, although for the greater part of that time it was known to be not only ineffective for good, but active in evil, and though it was decried by its own officers, scoffed at by Europeans, and execrated by the people whom it not protected, but oppressed. We are sorry to see that the excuse has been made that these days, (1837) were early days, and that the science of police was then only in its infancy even in England. Even the police Commissioners of 1861 have made mention of this apology. We can admit of no such excuse; it seems to us to be simply frivolous. England was whole centuries a-head of India even in the days of the 'Charlies,' nor was she in one-tenth part of the necessity for a good and strong police that India was in. The most determined enemies of the 'Charlies' never accused *them* for a moment of exerting an enormous power for the oppression of the people, and the benefit only of their own pockets. People in England then were not well-guarded in comparison with the people now; but they were, beyond all power of expression and comparison, better off than those in India. Then the country, in its richest and most civilized districts, was burthened with a flourishing system of wholesale murder by thuggee. Infanticide occurred in every other house. Gangs of armed dacoits,

(whose horrible cruelties in those days makes them a different class to those of the present time,) wandered all over the land to plunder and pillage with the most impudent openness, and murders, one of which would have made all England ring from end to end, were committed frequently, without the slightest chance of the murderer's detection. When it is urged on behalf of a Government that has allowed such a fearful state of things to continue unchecked, that it is only quite lately that the 'Peelers' superseded the 'Charlie' at home, one can only laugh and wonder at the stupendous paltriness of such an apology.

We will, however, let by-gones be by-gones up to the year 1837. Further than this we cannot. At this date Government at last threw aside for ever the old excuse of youth and inexperience. The then existing state of things was fully admitted to be a deeply serious evil, and a committee of some of the ablest and most experienced officers of Government was called upon to gather evidence from all classes of the community, as to the nature and extent of the evil, to obtain a clear view of the difficulties that had kept matters hitherto so backward, and to suggest remedies to meet the case. The committee executed its work in such a manner as to leave the Government no excuse of ignorance for the future. And we are particular in marking this period, not only because the vital errors in our police system were then so clearly demonstrated, but because the measures taken to obviate those errors did, in spite of their very great insufficiency, produce such an improvement as to show incontestibly that the principles on which they were taken were sound, that they attacked the disease directly and wholesomely, and that the only mistake made, was in the scant application of them.

There can be but few Englishmen now in the country who personally know the police that this committee reported upon. We can hardly expect those who have known only their successors, to believe us when we say that, atrociously bad as those successors were, they were a marked improvement on the body of 1838. Such however is the case. In proof of our assertions we can only refer our readers to the recorded opinion of the officials who had seen both, and who wrote on the police between 1854 and 1857, and to the evidence taken by the Commissioners, which will most amply justify those recorded opinions. That police was simply indescribably bad. Instead of being a protection to society they formed its greatest and safest oppressors. They certainly sought out all the thieves and bad characters in their jurisdiction, but it was only that they might be sure of getting a share in the spoil. Over and over again men entered the force for the sole reason that it afforded them the means of rapidly

acquiring wealth by violence and corruption, with almost no chance of detection. Actual robbers were enrolled, and sought to be enrolled, only because the appointment was their best stock in trade—because it served as an almost invincible weapon, at once of offence and defence. It will easily be conceived that the degree of insecurity to person and property, which accompanied such a state of things, was actually appalling. We cannot attempt to give in this place any abstract, however brief, of the evidence taken on this point by the Commissioners;—for that we must refer our readers to their report. But we may mention, as especially evincing the greater degree of evil which marked the police in 1838, the different character of the offence of dacoity as it then existed from that which it bears now. Not only were the bands larger, bolder, and more effective, but to join murder with dacoity was a very ordinary thing indeed. And hardly ever was there an instance of a dacoity, that was unconnected with the most atrocious, unnameable, torturing of the victims, men and women, old and young, with a view to extorting any property that might perchance be hidden. It was no protection to hide anything, for the country was so notoriously unsafe that the robbers could not believe that any body would leave their property unhidden. Let any one who doubts whether things have been better since 1839 than before it, read the sickening details in Blaquière's reports, in the one department of dacoity offences alone, and we do not doubt but that he will be convinced of an improvement.

The measures which produced the improvement were taken on much the same principles as those which were professed when the present system was introduced. The police of our large Zillahs, (undivided then by subdivisions) were left under the supervision and control of but one man, who, besides having to manage the police, had to sit as a civil judge, and to spend half his time, at the very least, as a Collector of Revenue. This was altered, and the police were made over to a Magistrate who had no revenue duties at all, and who had therefore, at least, double the time to devote to his police work. The pay of the force was so ridiculously small that any active Darogah would actually have spent four-fifths of his miserable monthly pittance (25 Rs.) in merely travelling about in the course of his duty—if indeed, any Darogah, in those days, had ever dreamt of paying for anything at all. This was altered, and the pay of Darogahs came in time to be about doubled, while that of the force generally was also increased.

It was found that the large area of Zillahs acted at once as a temptation and protection to a corrupt policeman, by making an

appeal to the law too expensive for the people who most needed its protection, and by making any real supervision and control, on the part of the otherwise occupied and sole officer who had charge of them, practically impossible. Here again the remedy of subdivisions, (one of the many measures by which Sir J. P. Grant has left his mark deeply on the country,) whereby the central controlling power was extended in its full force to larger and more manageable areas, was in course of time applied.

In short, measures were taken, first, to procure men of better character and capacity, by the offer of better pay,—and there was then provided a greater degree of supervision, which is the only security for the maintenance of honesty and efficiency in the thannahs. This is precisely the one principle from which we can hope for any improvement in the matter of police. It goes directly to the root of the matter. It commences at once with the officials at the thannah. Pay and supervision are the only means whereby we can ever hope to bring honesty and capacity into the thannahs and then to keep them there. The market will provide readily a sufficient supply of men of any required pattern, if the proper price is paid for them, and proper supervision in any quantity is a similarly purchasable commodity. No righteous Government should wince for a moment at the market price however high it may be, or should ever pay less than that price, for the success of any Indian police depends entirely upon it, and will be in direct proportion to the amount paid for the body of police, and to the amount of good supervision provided for it. Pay and supervision are, in fact, the beginning, the middle, and the end, of the matter.

We have said that the improvement effected by the changes of 1839 marked the soundness of these principles, but when we use the word improvement, we by no means mean to say that the results obtained were anything but execrable even then. The Government still did not pay nearly the market-price for what they required. When a man purchases for sixpence an article that he can only get good at a guinea, he is sure to be put forcibly in mind of a certain homely proverb about the nastiness of cheap things. When he afterwards pays a shilling for it he may be twice as well off as he was before, but his purchase will still be a worthless one. And just such was the case of the Government of 1839. To readers of the present day we need bring forward no justification of any language against the old police. The evils of that senseless system were so great, and have been so recently felt, that there can be no necessity for our here reciting them. Nothing was ever condemned by a more unanimous verdict. As in 1839 so again in 1860 there

was no one, official or non-official, at home or in India, European or native, who had a good word to say for it. And precisely the same kind of defects, very little weakened in degree, were acknowledged at the two different periods. There is no one who denies that this is the case, and that this should be the case is an undeniable disgrace to our administration. Sir F. Halliday, writing in 1856, admirably sums up the amount of progress in police reform that had been made up to that date. 'What, after all, 'has been done, (he writes) to improve the police during the 'last thirty years? We have ceased, it is true, to expect integ-'rity from darogahs with inadequate salaries and large powers, 'surrounded by temptation, and placed beyond the reach of con-'trol; and we have somewhat curtailed the excessive and unman-'ageable extent of our Magistrates' jurisdiction by the gradual 'establishment of thirty-three Sub-Division Magistrates.' Now, Sir F. Halliday was not only the most lenient enemy of the old police, but he laboured strenuously to retain the old police system, and a consideration of this gives especial weight to his words. When we think of all that happened in those thirty years; of the thorough manner in which the eyes of the Government had been opened; of the frightful state of misrule and oppression that had been brought to light, and of the clear exposition of remedies that had been made, another feeling joins itself to the sense of humiliation which comes over one on finding that nothing more was done than Sir F. Halliday has recorded, to afford relief to our subjects, and to wipe off the stain on our administration. Indignation itself can hardly find language adequate to characterize the conduct of a whole string of Governments, who, one and all, one after the other knowing what evils existed, and where the remedies lay, negligently acquiesced in those evils, and let the remedies alone.

History, it is said, repeats itself. We have seen that the police system broke down in 1860, from precisely the same defects that had broken it down in 1838. We have seen how markedly deficient were the steps taken to improve the police in 1839, and we are sorry—most sorry indeed, to be compelled to say much the same as to those taken in 1860. Unless there is some very radical reformation in the present system, we have no doubt whatever, but that there will be another trick done hereafter, and perhaps, we shall not even then get out of this miserable round. The disappointment is all the more bitter now, because of the height to which our hopes were raised at first; for not only were the promises very great, but there was for a short time a very considerable performance of them. There was every reason to expect too, that in times like the present, past experience

would at last have been made full use of, and that remedial principles, whose correctness had been over and over again proved to demonstration, would at last have been applied in the fullest possible strength to evils, whose existence was undeniable and undenied.

Taking things in their order we will first see what has been done in the way of supervision. When the system was first started in 1862, there was appointed a Superintendent-General as the chief of the police in the whole Governorship of Bengal. Immediately under him came his deputies, one to each local Commissionership, with duties in their jurisdiction precisely similar to those of the Superintendent-General.

In each district there was placed an officer who was given the charge of the police therein, who had none but police duties to perform, and who could devote his whole time to those duties, and under him a body of European assistants so numerous as to allow of one being placed in each subdivision of the districts, besides one at the Sudder station; and these assistants had within their jurisdictions powers similar to those of the district Superintendent, but subject to check and control from that officer. All this provided a very large degree of supervision. There was no stint of men or money. The Government seemed at last to be in earnest, and to have determined to expend their revenues on the police of Bengal, in a degree, which justice to the chief contributors to Indian revenue had long demanded. We cannot, however, say that we think that the *whole* scheme was wise, or that the money spent on the two higher grades was anything but wasted; for in our opinion the Superintendent-General and his deputies are absolutely no use whatever for any purposes of supervision or anything else. But the method whereby the authority of the District Superintendent was carried by his assistants into every subdivision of the Zillah we hold to have been an unmixed good, and a measure upon which the whole scheme of supervision depended for its success. The only great public measure that any Superintendent-General has yet taken has deprived the country of this, and has again confined the supervision of the police of a whole Zillah to one single man.

We will endeavour to give reason for our assertions. We do not feel it necessary to say much as regards the Superintendent-General. Seeing the gigantic area over which his duties extend, we are astonished that any reasonable being should expect from him what is required of him. It is all the more extraordinary, because the thing has been tried and proved to be a failure under the most convincing circumstances, where we find an officer so unusually well-adapted for the work, as was Mr.

William Dampier, telling the Government that, in spite of his most strenuous efforts he was unable to satisfactorily superintend the police in the most accessible districts of Bengal, and over an area actually large indeed, but comparatively small. We may be completely certain that no officer, however great his energy may be, can have the faintest chance of succeeding in an area three times as large, and the greater part of which is extremely difficult of access. It is astonishing that Government should again spend so much money for an object that has been demonstrated to be hopeless. When the Commissionership of police was given up, his duties were handed over to the Commissioners of divisions, each in his own jurisdiction, who corresponded on police matters directly with the Bengal Government. Why this should not be done at the present day by the Commissioners (or by the Deputy Superintendents-General, if they must be kept on) with the advantage of saving Rs. 39,000 in salaries, and a further large sum for office establishment,—we are utterly unable to imagine.

We come then to the much debated appointment of Deputy Superintendent-General, about which so much has lately been written in the public prints. We have said that the Inspector General is not only an impossible appointment, but a useless one if it were possible, because its objects can be equally obtained by means of the local Commissioners without the expenditure of one additional rupee, and with (as we further believe) considerable advantage to the general system of administration.

We wish to guard against being misunderstood when we say that these are very much our objections to the office of Deputy Superintendent. On animadverting upon this grade we do not for a moment deny that the objects it is intended to attain by this means are most useful; for we consider them as absolutely essential. Our argument is, that the system of Deputy Superintendents is at once the most expensive and the least efficient of all means to these most essential ends; and should on *that* ground be abolished. We do not for a moment mean to impute personal incapacity to any one of the gentlemen holding these appointments. We attribute their practical uselessness to the restrictions of necessity placed upon their functions by the general system of administration, and to an utter want of experience; which experience it is no fault of theirs that they do not possess, but which is the fault it and the very nature of their work that they can never acquire.

Colonel Bruce has quoted from a Minute, by the late Lieutenant-Governor of Punjab, a very clear and precise statement of the work that is expected from a Deputy Superintendent.

'The Deputy Inspector General becomes a school-master of 'his District Superintendents to instruct, advise, and guide them. 'He takes care that every district in his division works *con* 'amore with others and not independently. He is kept perfectly 'informed of the state of crime in each district. He watches closely 'the working of each District Superintendent, and is ready at once 'to remedy any omissions from ignorance, and punish any faults 'from carelessness. His duty is to teach and instruct and keep 'all his officers at work. He is, in the opinion of the Lieutenant 'Governor, *the backbone of the system.* His central position and 'large jurisdiction enable him *particularly to study professional* 'crimes. He traces it from one district to another, and prevents its 'concealment. All this he does without the least harassing his 'District Superintendent. In fact the suppression of crime is his 'primary duty, and the maintenance of discipline and interior 'economy is perfectly compatible with it'

No one has ever been found to deny the extreme importance of these duties, or that their proper discharge is essential to any system of police that is worth a straw. But the question has been raised as to how and by whom they must be carried out to ensure their proper performance.

One of the things that makes the present system so deplorable is, that it introduces into the department of the criminal executive a divided and therefore a weakened authority, a double Government in the strictest and most condemning sense of the term. 'The part,' says an old Greek proverb, 'is sometimes greater than 'the whole,' and similarly there is a sense in which it is true that two are sometimes less than one. The system which makes a Commissioner the head of the police in his division, but forbids him in any way to interfere with the management of the police, or to bring himself in contact with the officers or the force, and which gives the Deputy Superintendent General the internal management of the office, but allows him to make no use of it, except under the Commissioner's direct sanction, is a manifest absurdity that was called into existence only on account of a perfectly insane endeavour to combine the principle of separating police from judicial functions, with the practice of maintaining united police and judicial functionaries. In all the newspaper correspondence on the subject we have never seen a single instance of anything being urged in favour of this division: there has been no sort of difference of opinion upon this point. The one only question that has divided people is, as to which of these two ought to be invested with the authority of the other in addition to his own. None who have written on the police side of the question have supported the present system, as it now exists.

We are all in favour of the Commissioners in the matter. Much has lately been said as to the inutility of this officer so long as there also exists a Board of Revenue. We can by no means concur in any such opinion. We do not think that either the Board or the Commissioners can be done away with at all. It is possible, very possible indeed, that the Board might in another form be made at once more effective and cheaper; but we never once have heard of any one who would argue, that its functions could lapse altogether, and that the Government could successfully conduct the revenue administration at first hand. It is obvious that any Lieutenant Governor, who attempted to super-add to his present work all the work of the Board, would be completely overwhelmed. With a view to getting the administration accomplished at all, and on the soundest principles of the division of labour, it is at once necessary and politic to hand over to men of large experience and capacity all matters of executive detail, which it is not necessary for the Head of the Government to perform himself, and which it would be a simple waste of valuable time for him to perform. And it seems on all hands agreed that an arrangement for this object must be made, whether that arrangement appear in the form of the present Board, of a smaller Board, of a Revenue Secretary, or any other of the many schemes that have been suggested. But we cannot but look upon the Commissioners (even were they merely revenue officers) as a necessary corollary to the Board of Revenue. It is as true of them as of the Head of the Government, that they would infallibly be swamped if they attempted to administer the revenue at first hand. It is as true of them that they can only get through their more immediate important duties, by leaving the details and lesser work to subordinates who can accomplish them as thoroughly. Assuredly no one who is acquainted with the workings of a Collector's office will deny this position. We cannot but think that any one who does deny it, does not know how *very* much of a Collector's time is taken up in corresponding with the Commissioner, what an *enormous* mass of writing passes between them, and how very little to the point most of it is. The Commissioner and the Collector are very considerably occupied in merely putting rough material into a fit state for the Board to work upon. Let any one take up a large bundle of correspondence and separate the pith from it, and he will see how very small a portion of that bundle the pith *is*. The bulk of it is made up of *takeeds*, mistakes, corrections, explanations, explanations of explanations, &c., &c., &c. It is absurd to suppose that the Board can waste their time over such work as this, though, of course, such work must be done. The most

determined enemies of the Commissioners must allow that each of them has at least two hours of work a day.

On this calculation if the Board undertook the duties of the ten Commissioners, it would require them to work twenty hours every day *merely to get their material in order*. There seems to be pretty strong proof that with their material ready, the Board have at least as much to do as they can get through. How else is it to be accounted for that they are so continually in arrears? It must either be most unreasonably and unwarrantedly asserted that gentlemen, selected for the Board for their distinguished industry and capacity, turn foolish and idle as soon as they are placed there, or it must be admitted that in spite of all that is taken off their hands by the Commissioners, the Board is over-worked. The office of Commissioner, of Revenue follows as a necessary corollary on this unavoidable admission.

But it is a great mistake to consider the Commissioner as being only, or even chiefly, a Commissioner of Revenue. The Head of the Government in whom all executive functions unite, does not require assistance in the Revenue Department only. This may, indeed, be that which is the most immediately interesting to the Government, but the department which secures the public peace, and guards over persons and property, is assuredly a more important one in itself. In any government in the world worth mentioning, nay, in such comparatively small matters as the command of a ship or a regiment, the Head of affairs can only carry on the administration at all by means of subordinates, to whom much of his power must be delegated. But in a country so physically circumstanced as Bengal, of so gigantic an area, and so mixed and dense a population, the Head of affairs is under a more than ordinary necessity of delegating a more than ordinary proportion of his authority to his immediate representatives. No Lieutenant Governor unaided could make his power felt throughout the whole of such a province as Bengal, nor, indeed, if he could make it felt, could he possibly tell where and how it required to be exercised. The Commissioners are at once the hands that wield his power, and the eyes which direct it.

It must be sufficiently obvious that in any such arrangement, the error should be avoided of giving to the Lieutenant Governor's delegates any division of the country, that by mere smallness of size may fritter away the Lieutenant Governor's strength, or take away from the broad *coup d'œil* of affairs, which it is essential that such a Governor should have.

There must then be men who, under whatever name, shall be in a position that corresponds to that present Commissioners, so

far, at least, as regards the extent of their jurisdictions. We think it no less obvious that in order to make them of the greatest possible use to their chief, and also, still more, in order to preserve that breadth of action which is essential to the head of the Government, they should be invested under him with every power of a Lieutenant Governor, which would not interfere with his own liberty of action. Indeed, it is only by an arrangement such as this, that the Lieutenant Governor's authority can be divided out among Commissioners in such a manner, that it shall not be weakened in the division.

Briefly, it seems to us incontestibly necessary, that the Lieutenant Governor in his full executive authority should be represented by officers of high dignity and talent, within as many large subdivisions of the province as its extent may demand; and we do not see how such officers as these can differ materially from the present Commissioners. At all events it will not be denied that, whether this be a correct theory or not, (and we have no doubt of its correctness,) it is at least the theory which is in actual practice; and we complain that the office of Deputy Inspector is one that is totally at variance with it, and prevents the fulfilment of the demands which it was intended to meet.

Anything that destroys the unity and completeness of the Commissioner's office, necessarily tends to detract materially from his general usefulness; and this must be more than ever the case, when he is deprived in any degree of the control of that department, by which the immediate and most important object of all government must be attained. He is no longer able to give even an approximately correct view of the state of his province to his chief, from any personal knowledge of his own; nor will it be denied by any one acquainted with the Moffussil, that the loss of that insight into general affairs, which the exercise of police functions alone can give, materially interferes with the Commissioner's extent and correctness of view in other matters, and thus introduces a source of weakness which must taint the whole executive Government.

The method again in which the Commissioners have been deprived of their police functions strikes us as peculiarly objectionable, inasmuch as it is a method admirably calculated to weaken directly the higher control of the police. If there is any department in the world which needs centralization, and a centralization of a peculiarly defined and determinate character, it is the police; but the result of the present arrangement is, that there is no centralization at all, and (as the proposers of the scheme have themselves declared) it is impossible to define where the duties of a Commissioner and a Deputy Inspector begin or end

with respect to each other. The result of such indefinite arrangements must be most obvious. It opens a wide door for the most lamentable disagreements; and it puts an end at once to all uniformity of public action, not only in each division of Bengal, but even in each of its districts. Where the definition of their functions is left to be arranged between each Commissioner and each Deputy Inspector, it is clear that in each division arrangements will vary with the characters of the men. In one district a *laissez faire* Commissioner will leave the Deputy Inspector in preponderance, in another for the same reason the Commissioner will be uppermost, and in a third there will be a hard fight and some equality between the two. As the officers are changed, the preponderance will change with them.

Nor does this uncertainty attach only to the divisions, it runs through each Zillah as well. The orders of a Magistrate are supposed to be binding upon the District Superintendent in all that does not relate to the internal management of the force. As a matter of fact, however, it is not so. Whenever the indefiniteness of the arrangements leaves it open, (a matter of very frequent occurrence), a District Superintendent immediately appeals the order to his Deputy Inspector. The amount of quarrelling and heart-burning which this must lead to, and *has* frequently led to, is one of the most serious drawbacks in the present scheme: and its action in weakening the police it is difficult to over-rate. It has led to a most lamentable jealousy between the general executive and the police, a result which with all its attending evils might have been, with the utmost certainty, predicted, from the division of the police functions. It has further led to a most obvious partizanship (honest no doubt) and to a dangerous antagonism, which, in every difference of opinion leaves all the police officers always on one side, and all the civil always on the other; and such a wound as this must soon be fatal.

We ask our readers to re-peruse that statement of the duties of a Deputy Inspector, which we have above quoted from the late Lieutenant-Governor of the Punjab. We have stated our full concurrence with it, nay, we insist upon it, as any reasonable man would, as being essential to the higher objects of any system of police. Why is it then that duties so essental and important are taken away from the immediate heads of the large divisions of Bengal? Why are such officers thus in executive charge deprived of the power of acquiring personal knowledge of their police officers? Why may they not guide them, and remedy their defects, and keep them to their work? Why are *they* of all men to be precluded from studying at first hand professional crimes, &c., &c.?

The objections seem as little obvious as the advantages are directly obvious. It must surely be indisputable that the chief executive officer of a division, one who is expected to keep a strict eye on criminal matters, and to report annually on the work of the police, would be very much the better for a personal acquaintance with the crime of his division and its suppressors, while he would bring with him a knowledge of the characteristics of his division which he alone can bring, and which must be most invaluable to any one who has to discharge the duties set down for the Deputy Inspector General. Is it in any sense a politic measure to deprive the police of all the weight, influence, and experience which the Commissioner, and he alone, can bring to it? Is it in any point of view wise to pay another man to perform what are already the clear duties of the Commissioner? Does not experience tell us that when two men are each responsible for the same work, each is liable to suppose the other will do it, and so leave the work undone? But we complain, chiefly of all, that under the present system there is no reasonable hope or chance that these essential duties can be fulfilled by the Deputy Inspectors. These duties have been long perceived and acknowledged to be duties requiring more than simple energy or general talent for their discharge. They are difficult and technical to an extent that demands a long apprenticeship. No man can possibly hope to be born as it were into a knowledge of them. Few things were more universally admitted than that the want of experience and practice in Zillah Magistrates was one of the primary causes of failure in the old police. At the worst of times the average Magistrate's experience extended over six years, while there has been but one instance of a Magistrate of only three years' standing. If this sort of thing was totally insufficient for the conduct of the police of a district, it is clear that a very much larger amount must be required in the Head of a division. Considering that the many errors of inexperience are amongst the things which called for the downfall of the old system and the erection of a new one, it strikes us as the most marvellous part of that new system that it puts into the offices requiring most experience, men who at that time had never had one day's experience; and not one of whom at the present time has more than that very three years' experience which was held up to such fierce derision in the case of one district officer! Here is a 'heaven-born' system with a vengeance! Only one of two things can occur from such appointments. The Deputy Inspectors must choose between being uselessly inactive, or mischievously alert. The hardship upon these gentlemen is that being at once promoted above the only grades in which an apprenticeship

to their business can be served, they have no chance whatever of acquiring any knowledge of that business, and that the certain result has taken place that they are far less practised and capable, as officers, than their own subordinates whom they are expected to supervise. The writer has himself seen several striking instances of the feebleness of the Deputy Inspectors, and their inferiority to the District Superintendents. The writer has seen masses of reports sent in by the District Superintendents to their superiors which have been returned, without the slightest notice having been taken of any of the more important parts, and scarcely ever with any remarks at all, unless it is upon some point of difference between the District Superintendent and his Magistrate, in which, without one exception, *the District Superintendent has been invariably supported.* Unless there is some such difference or a direct question put, the reports are returned uncommented on. One striking instance we can give. In one of the Western districts where the inhabitants were suffering severely from scarcity of grain, several exasperated villagers began systematically to plunder the grain boats passing through their villages upon their way to Calcutta. The matter was, of course, one of unusual importance, as being a gross outrage likely to lead to aggravated riots, and sure to have the very sad effect of frustrating the object of the rioters, and preventing dealers bringing their grain into the district at all. A careful and able report of it was submitted to the Deputy Inspector General, and was returned by him without comment; nor did he even by word or deed take any action of any kind in what were assuredly the most important cases by far of the whole year. The only thing by which one could judge that he had read the report at all was, that at the last paragraph he had recorded his concurrence with the District Superintendent against the Magistrate, on a matter of most trivial detail concerning the method of collecting Chowkeydaree Tax!

It seems to us that in all this there is a worse error than the merely paying a high price for an unattainable object. During the first years of the new system (the period of all most valuable for purposes of instruction, and in which the permanent characteristics of the system will have been acquired,) the police will be deprived of all which would give them uniformity of action, which would guide their endeavours in the most proper directions, which would be the animating principle of the whole body, and which would make each of the detached and distinct portions work together, as if they were all wheels of the same machine. It will be very long before the system can recover the effects of so very bad a start, and till it does recover it, the public will be made to suffer most largely and most unjustifiably.

Lastly, even supposing that the Deputy Inspectors were men qualified by experience to undertake their functions, Colonel Bruce seems determined to make it physically impossible. When the new police came into existence, the question had to be decided as to what was to be the extent of jurisdiction of each Deputy Inspector General. The problem to the solved was a very delicate one. It was (to paraphrase the words of the Police Commissioner) to assign to each man the maximum area of crime that he could watch, and the maximum police force that he could singly bring to bear upon it, without ever exceeding the limits in which he could do this efficiently, so that while arranging that the strongest possible combined action might be brought to bear upon crime, (especially organized crime,) the error might be avoided of making the combination of force merely nominal, by giving it too large an area, in the more distant parts of which the influence of its controller could be felt only to paralyze action. In short, each centralized area was to be made as large as possible without being too large. How has this problem been solved? For reasons too obvious to need enumeration here, there was little choice left but to make in Bengal the jurisdictions of the Deputy Inspector General as nearly as possible conterminous with those of the Commissioners, whether they included only one or more than one. At first starting, a Deputy Inspector General was appointed for each Commissioner's division. They have since been gradually reduced till at last, since the publication of Colonal Bruce's final report, there are but four Deputy Inspectors General to the whole of the Regulation Provinces and to Chota Nagpore into the bargain. Each of these officers has from 9 to 11 districts to superintend, having areas of from 44,000 to 75,000 square miles, with populations of from 8 to 10 millions of souls! The jurisdiction of one of these officers extends along the whole coast of Bengal—from Pooree on the West to Chittagong on the East.*

We emphatically deny that it is possible for any officer to become a master in such tracts as these. No man can possibly make any close supervision in such an extent of work. The inevitable consequence has resulted, that there is no highly paid officer, whose existence is so entirely unfelt and unnoticed

*At one time, and for some few months, the officer in charge of this latter range (of all others) was burthened with the additional charge of another large division! It may sound incredible, but it is the fact; and the only excuse we can suppose for the Government that made such an appointment, is, that they were firmly convinced that the Deputy Inspector General's was a merely nominal office, from which no political benefit was to be obtained.

as is the case with these Deputy Inspectors General, with whom it should be precisely the reverse. Their time is chiefly taken up in corresponding, reporting, and making returns. When they do travel about, they make the most flying and resultless visits, in which their most anxious business would seem to be, the laying their dâks in time to get on to the next place. These gentlemen, owing to the large areas of which they have to take charge, have sunk into that sort of public life which is the lot of Post Masters; they are continually occupied in the receipt and dispatch of letters, and in any such way as this, they can never make themselves of the slightest use either to the Government, or to the Zillah authorities, or to the public. On the whole, we think we never knew either a more useless or more mischievous waste of public money, than is incurred for these officers. What *can* be the amount of supervision (which, as we have said, is, together with pay, the beginning and middle and end of the matter,) that these four men are capable of providing for all Bengal? They are needles lost in a pottle of hay, and to the officials at the thannahs, (where supervision is most essential,) they are as though they were not!

The grade of District Superintendent is the first one, the only one, in which any useful change has been made; we are sorry that even in this, we must admit the existence of a great deal of alloy. Very much of what we have already remarked as to the relation between the Deputy Inspectors General and the Commissoners, is applicable to the District Superintendents and the Zillah Magistrate; and it is the less necessary that we should repeat these remarks, as we wrote with some fulness upon the matter in our former article.

Decidedly the most important and most healthy reform aimed at in the new system, was that whereby this grade of officer was enabled to bring about in a great measure the separation between the police and judicial functions. It was not a full measure, however, nor could it possibly be so, so long as the Magistrate was concerned as a police officer in all the more important cases, and at the same time continued to sit as a judicial officer. We will admit if it be so required, that this arrangement was an unavoidable one; and that the tact of the officers concerned, combined with their knowledge of the desire to separate these functions, would prevent the Magistrate from hearing judicially any case that he had himself worked on as a policeman. In fact, that if the union could not always be avoided, it might have been expected to happen in so very few cases, that the exceptions would hardly be perceptible. But even this is not to be allowed, and ("*mirabile dictu*") it was the High Court itself which urged on the

Government to the destruction of one of the very chief elements of all justice and fairness.

The High Court in their last annual report expressed extreme dissatisfaction that the Magistrates of the districts had personally tried but very few cases, and ordered that in future they should exercise their judicial powers to a marked degree, and in what class of cases? Why, in all the most important ones, in those precious cases in which of necessity the police must act, and in which the Magistrate has to direct and guide the police action as head of that department. This extraordinary order to policemen to sit as Judges over their own police work is, perhaps, the most astounding order that was ever issued by a Bench of Judges. It is to the Bench of Judges, of all others, that we should have looked for the assertion and resolute maintenance of so very axiomatical a maxim of justice as would be indicated by the exact opposite of this order.

We are particularly astonished at the reason assigned for it. The Judges say, that it will not do for Magistrates, whose next promotion will raise them to the Zillah Bench, to take their seats upon that Bench without having had, during some previous years, any judicial trials to conduct. They express a fear that Judges thus unpractised will be found deficient both in their law and their procedure. We are astonished that such an argument has come from gentlemen, who have themselves been Judges and Magistrates and police officers. There is a plausibility in it, which might make it appear sound to every one who is ignorant of the real state of the case, but the Judges can hardly plead ignorance of it. We deny utterly that a Judge who as a Zillah Magistrate, has tried no police cases himself, will be a bit the worse Judge on that account.

The reason is simple. As a policeman, he has done everything that is done by a judicial officer hearing a case, with the single exception of passing sentences;—*acquittals* he performs over and over again. There is not one step in the hearing of a case down even to the selecting of a charge which is not first gone through by the police, before the case goes to the Magistrate for trial. It would be just as good an argument to say, that the Magistrate who commits cases to the Sessions, has no judicial experience. In such cases, the police officer stands to the judicial Magistrate in a relation which differs in no material way from that which exists between the committing officer and the Sessions Judge. Every shred of evidence which the judicial Magistrate hears, has first been heard and recorded by the police officers. The policeman like the Magistrate has to weigh that testimony, to check it by other testimony, to consider upon its admissibility or otherwise,

to check it by other evidence, and to decide upon the degree of credibility to be attached to it. Like the judicial officer, too, he has to decide what is the offence that that evidence tends to establish, and to quote the law applicable to it, or whether it makes any offence at all. And he does this under a guarantee for his carefulness, which has precisely the same effect as the guarantee of appeals. The judicial bench is, in fact, his court of appeal, and according as his work stands good, or is condemned there, his character is acquired. If this is not a judicial training for the criminal bench, then there is no such training to be had. At any rate it must be undeniably so, if it be further combined with the actual trial of cases in which the police are not concerned. So simple a course as this does not leave any necessity at all for what we must call so culpable an order as that, whereby the highest judicial court in India have announced, that the more their subordinates break the golden rule which forbids the thief-catcher to be the thief-trier, the better will that High Court be pleased with them. Perhaps, when the bench could commit themselves to such an order, it is not astonishing that the Head of the executive Government should have backed them up. Nevertheless, we *are* astonished that the Heads of two such departments could already be found uniting to work the downfall of what has always been allowed to be the vital and animating principle of the reform so lately introduced. Of this order we will only add, that it has destroyed the chief use and object of the office of District Superintendent.

It is impossible not to feel a very high respect for this grade of the police. We think that the extent of experience that they have contrived to extract, out of the little more than three years, during which they have existed, is perfectly marvellous. And not the least remarkable and praiseworthy fact in connection with them is, that they have, as a general rule, pulled thoroughly well with the magistrates under circumstances which might have been expected to lead to very different results. The grade seems to be day by day acquiring more usefulness and skill, and we make no doubt but that in a comparatively short time, its members will become as excellent officers of police as can be desired. Some faults we must admit, but most of them are inseparable from the system, and a good deal must be debited to the fact, that the District Superintendent is subordinate neither to the Magistrate, nor to the Deputy Inspector solely, but owns a divided allegiance to both. Owing to their being only policemen and unconnected with the general executive, they are apt to take a view of the work too narrow for an Indian police officer.

Instead of looking at crime in the mass, drawing general conclusions from it, and making a special arrangement in accordance therewith, they are too apt to look no further than each particular crime as it comes under their notice, isolating it altogether from its fellows. One more fault there is, and of the very greatest importance, which we must attribute to the officers themselves and not to the system. Time, it is to be hoped, will cure it, but the sooner it is eradicated the better. There unfortunately exists among them an '*esprit de corps*,' (so called), of a very fictitious and deleterious character, which appears in a lamentable tendency to stand by their subordinates through thick and thin, through evil report and good report, under (apparently) the unreasonable idea, that it will not do to let the force appear otherwise than immaculate. Nay, so far has this gone, that some District Superintendents seem to act in the belief that it *is* immaculate, and to be unable to credit, however patent it may have long been to others, that a native policeman, even of the highest grades, may be a great rascal. Not only does this most blameworthy leniency exist, but there is added to it the fatal mistake of publishing its existence to the native force. We need but refer to the late case of Inspector Maclean to show the sort of thing that we mean. Supervision of this tender nature is worse than no supervision at all. It is the holding out of 'sweetmeats in both hands,' which will no more answer with the native police than it did with the native army. It is well to have and to exercise the power of reward; but one hand should hold the rod, and hold it to some purpose. The police are not, and never have been, a body to be relied on and trusted. Had they been so there would have been no need of District Superintendents. These officers should be jealous to detect and punish, rather than to conceal, blemishes. Their hand should fall heavily on all offenders, or they are worse than no use at all. Without unflinching and unfailing punishment wherever wrong-doing is detected, there can be no controlling the police, and no earthly use in supervision.

But enough of fault finding. It is a very great improvement indeed, that there is now an officer placed in charge of the police who is required to devote his time solely to the police, and who cannot compensate for failure therein, by any success in other matters. But though this has led to a most marked improvement in the *official* work of the police, though the police work is most admirably scrutinized, and cases are sent up incomparably better prepared than in old days, yet we cannot say that the District Superintendent, harassed as he is by far too great an extent of office work, has sufficient personal acquaintance

with the native ploice, or any thing like a sufficient power of supervision, where supervision is most essentially necessary. We mean in the non-official action of the police, their relations with the people, and all those matters which, for the best of reasons, they desire to conceal from the District Superintendent. Let us consider the chief cause of so serious a blemish.

It seems to us that the most essential blunder of all has been committed with regard to the Assistant Superintendents. Colonel Bruce's agency has made itself felt in reducing the number of officers in this grade, till, instead of there being one in each subdivision, as well as one at head-quarters, there are now scarcely any in subdivisional charges. Colonel Bruce seems to us to have missed altogether the real use and great importance of this grade. He has caused a renewal of the old error of doctoring every part of the system, save that in which the disease is seated; and this is the more unaccountable, when we consider how frequently it has been demonstrated that the one hope of really reforming the police, lies in really reforming the thannahs. It is startling to find that the only reform that has ever yet been applied to the thannahs, has been almost immediately withdrawn.

We will endeavour to explain what we mean in thus calling the grade of Assistant Superintendent as it at first existed, a reform bearing directly on the thannah. By far the greatest, and almost the sole difficulty that there is with the thannahs, is the counteracting the (very generally) insuperable temptations, to which the officials are subjected by their position. As a general rule, no men of any country can be expected to have in themselves a love of virtue for its own sake, sufficiently strong to carry them scathless through the ordeal. The nature of these temptations is too generally known, and the subject is too hackneyed, to make it at all necessary for us to take up space in making a detail of them; but the present regime has developed a new one, whose strength it is difficult to over-rate, and which we must notice. There has been a degree of pressure and stress laid by the Governor and the Heads of the police upon the procuring of convictions, that has, in our opinion, worked a great deal of harm whenever it has been applied, but has been most directly mischievous with the police. Now a days, every officer, from the District Superintendent downwards, is taught to believe that his character in a great measure depends upon his being able to shew a large proportion of convictions against acquittals. The consequence of pressing so very dangerous and objectionable a test is, that now every police officer who has made an arrest, even if under circumstances of suspicion sufficient to justify the arrest to any reasonable man, feels

that he has made a great mess if it is shown to him that the arrested man is innocent. Long after he is actually convinced, he will argue against himself that it cannot be so, and he detains the poor fellow in custody to the last possible moment, straining every nerve to make out as strong an apparent case as possible against an innocent man. It can hardly be necessary for us to show what this will infallibly result in. In the case of a man who leads the life of a native police official—a life of temptation which it is hardly in human nature to withstand—it must be a matter of too frequent occurrence, that in such a case as this, the policeman will not confine himself to legitimate means. And still more often will this be the case, when the accused has been arrested on grounds that are not reasonable, (and hasty arrests are of common occurrence,) which will ensure the policeman a severe censure at least, if not some heavier punishment.

The police have long lain under an incentive to procure evidence, even true evidence, by illegal and violent means, for which the administration is in no small degree to blame. It is undeniable that the police and the administration between them have made a criminal prosecution a burden of such a crushing weight, not only upon those who are connected with the trial, but also upon all the inhabitants of the place where the investigation is made, that it has become the one object of the whole Moffussil population of Bengal, to attempt to hush up crime, to keep out the police when possible, and, when it is not possible, to hush up each his own individual knowledge of it, in order that they may not undergo the severe misfortune of being required to appear as witnesses. The police being met by a difficulty so great, and being at the same time compelled to detect crimes, took the one step that suggests itself to native minds in such cases, and proceeded to extort their knowledge from the villagers by hard usage, in fact, by torture. By merely changing designations, but leaving other circumstances unchanged, it could not be hoped that a traditional policy, so deeply ingrained and so very consonant to the character of the people, would be altered. Indeed, the amount of consideration and deferential respect which has been thrust upon them lately from without, unaccompanied by any of those qualities from within which ensure such consideration and respect without any occasion for enforcing them—nay, even the pretentiousness of their garb and of their semi-military training,—have conferred upon the new police an arrogance and unwonted sense of power, which, it is much to be feared, have made them bolder in the abuse of power, while it has assuredly made the people more abject to them, than ever.

But that which, more than anything else, has a tendency to confirm the policeman in a course of violent action for what he supposes to be the benefit of justice, is the unfortunate distinctness with which he is allowed to see that every conviction he obtains tells in favour of his superior, and is well pleasing to him. Doubtless, nothing is more true than that the superior would be the reverse of pleased, if he discovered that even a just conviction had been obtained by unlawful means. But unfortunately nothing is more true also, than that native officials of all classes do not believe this in their hearts, and evince no belief of it in their action. It may appear hard to say so, but truth compels us to observe that this want of faith in the honesty of their superiors, is very much the result of the line of conduct which those superiors have unfortunately taken. Not for a moment would we stoop to make any unjust and unworthy imputation against a body of zealous officers and gentlemen, whose uprightness of conduct is not less conspicuous than their zeal. But we will ask them to consider what must be the effect on the native mind of that miserably misapplied '*esprit de corps*' of which we have before spoken, which induces so many police officers to shield the misdeeds of their subordinates from public scandal and from the anger of the law. Any extenuating of wrong doing, any warding off of its just punishment, by officers of police in whose favour the wrong doing has told, can have but one effect on the minds of their half-educated and far from scrupulous subordinates. They will assuredly believe that their superiors are very willing to benefit by unscrupulousness, and that their sin will be comprised not in the wrong doing, but in the being detected. Even one such instance as that which lately occurred in Beerbhoom, (where a District Superintendent having in a public manner admitted that his subordinate was guilty of cruel torturing in order to extort a confession, strove his utmost to screen the offender from the just penalties of the laws he had outraged,) would publish to all police subordinates a state of affairs which could not but confirm and encourage them in obtaining evidence (true or false) by very similar means.

And how are these temptations to be counteracted? There can possibly be but two ways. The first is to raise the pay of the police so high, as to place them above temptation, and the second is, to exercise towards them a supervision so close and and constant, as to leave them little or no chance of escaping detection in wrong-doing. The first of these methods is not only very uncertain in its action, (for who shall put a limit to the greed for money!) but it is financially impossible to carry it out. Nor would it be justifiable to do so, whilst there remains

another means not only cheaper, but more direct in its action, and far more certainly effectual.

We are left then with the one available resource of supervision so close as to leave a corrupt and violent policeman no chance of escaping detection. Well, and where is it to be found? The answer to this question is a most disheartening one. It is nowhere to be found, because this most essential check has been swept away by the promoters of that new scheme, which not only left all the old sources of temptation undiminished, but which has added new and powerful ones. Of course it will be said that there is a greater amount of supervision than there ever was before, seeing that the District Superintendent, and his Assistant at head quarters, have no other work than police work to do. But we deny it. It is, true, if the present state of things be compared (though merely comparative improvement is not required) with that under the old police, but it is not true *if the new system be compared with itself*, for there is not by many degrees the same closeness, or the same amount of supervision that existed, when every subdivision was under the immediate charge of its own Assistant Superintendent. The retrograde step that has been taken seems to us to be quite inexcusable. We will maintain without any fear of denial, that as regards that description of supervision which we are now writing about, the District Superintendent is to all intents and purposes every whit as ineffective as was the policeman Magistrate. It is true that in the official work of the thannahs (which the native police *cannot* keep from their superior's eye), the District Superintendent is enabled to put such a check upon official ignorance, upon negligence or apathy, as has wrought an improvement of a most marked character in the quality and finish of police work, an improvement which we think will be admitted by almost all judicial officers. But in non-official matters, in all matters of illegal interference, of violence or corruption, of which police in Bengal have been undoubtedly guilty, and which they are undoubtedly adepts in concealing from the eyes of their superiors, we repeat that it makes no difference whatever to the malfeasant policeman, whether his sole supervisor is a policeman Magistrate or a District Superintendent. It is a hopeless thing, a demonstratedly hopeless thing, to expect that any *one* man situated at head quarters, whose time is occupied to no trivial extent in office work, (and who can rarely leave his head quarters without his destination being known), can exercise a supervision so constant and searching, as to enable him to follow the minor movements of each of his thannahs, or to give the slightest uneasiness to any of his thannah-dars.

It would be difficult to imagine any practicable plan, which more directly attacks the evils to be remedied, or which could supply a sharper supervision, than that which was formerly supplied by the Assistant Superintendents in charge of subdivisions. These men multiplied the strength of the District Superintendent by the number of sub-divisions in the District. They gave him in no small measure the advantage of ubiquity. Instead of being oppressed with the whole weight of all the district thannahs, he never felt the burden of more than the four or five which formed each subdivisional jurisdiction. These jurisdictions were all of a very manageable size, and the officer in charge of them was brought very directly in contact with the thannah officials. He was not only enabled to see their work thoroughly, but he was also able to see them at work whenever he chose. He was able to teach in a few hours on horseback any portion of his charge with the greatest ease. He might be here to-day, there to-morrow, elsewhere on the third day, and none could tell whence he had come, or whither he was going. Each policeman would have been satisfied that his rigid supervision might appear at his police station any day or any hour. Nor was this direct supervision the only species open. An active young man, travelling constantly about, and keeping his ears and eyes open, would be able to tell very fully and accurately, how his subordinates worked, and precisely how they treated the people who came under them. If such an officer made himself accessible, and listened patiently and fairly to all that the people might bring before him, and let them know as an European very soon would, that he would listen with readiness, decide with impartiality, and punish with severity where punishment was due, he would very quickly come to be regarded—by the people as a protector from oppression,—and by the police, as a man whose honesty and well-used means of acquiring information would render oppression on their part a most unsafe, if not impossible, game to play. *This* is the sort of supervision that all past experience has shown to be essential, and without this we do not hesitate to say that no police will acquire a character for honesty or trustworthiness. We feel that we cannot too deeply lament the loss of this, which is the only supervision worthy of the name. We cannot but look upon it as perhaps the most important, and decidedly the most essential of all parts of the new scheme, as it was originally put in practice. We do not hesitate to assert our belief, that had all other grades of police officers been abolished, and this alone been retained, we should have had a body of native police of a far more trustworthy and reliable character, than has been produced by the exactly opposite course of

abolishing subdivisional assistants, and retaining all the other ranks. We do not urge any other objections to the abolition, we do not here refer, as we did in our former article, to the extent of the mischief which has been committed by abolishing all subdivisions, as regards the most important department of police, for we feel that all other considerations, important as they may be, are swallowed up in the magnitude of those which we have been urging, concerning the protection of the public from the police, and of the police from the overwhelming temptations which beset them.

Colonel Bruce has given in the publications at the head of our article a variety of reasons for his recommendations to reduce the Assistant Superintendents to a number that shall leave some half dozen districts without any Assistant Inspectors at all, and no districts with more than one. We cannot avoid the conclusion that he has striven hard to make up these arguments, and that there is not one which he himself feels strongly. He was extremely disgusted to find that a great number of these appointments had been assigned to men who, however worthy, were not moving in what he considered a sufficiently high sphere of life, and the reason of his objection is the not unnatural or improper one that Government had promised to raise these assistants to the highest ranks of the police, in the order in which they might pass their examinations. He complained that in making these appointments, quality had been sacrificed to quantity, and that men had been appointed who had served no apprenticeship, save such as can be acquired on a flat, or a river steamer, or in the offices and shops of Calcutta. He feared, we think, with too much reason,—that the Government that had promised them promotion, would find themselves embarrassed by having to promote a great number of very unfit men, who, nevertheless might, and probably would, pass examinations in the native languages far more rapidly than those more fitted for the appointments. He desired to see the grade filled with young gentlemen in the position and with the pay of ensigns. We admit that as long as the two principles of indiscriminately appointing, and of invariably promoting, are preserved together, there is great force in these objections and proposals. But surely to abolish the whole useful portion of a grade capable of rendering such important and such essential services, was not a proper remedy for the case. Half a loaf is always better than no bread, and if one cannot get the best, it is as well to take the best one can get. We agree with Colonel Bruce so far as to say, that we should like to see only educated gentlemen promoted to the higher grades of the police, because in such an important

department it must be of the clearest advantage to have the safeguards of gentlehood and education. But if Colonel Bruce means to say that such duties, as we have described for sub-divisional Assistants, can only be properly discharged by gentlemen corresponding to ensigns in the army, we must entirely differ from him. All the essential qualities of honesty, zeal, activity, and industry, can be found in men of a somewhat less position in life, and of a less liberal education: can be found too, with all those qualities of mind and character, that make their possessor respected, whatever may be his sphere in life. Would it not have been a far better plan to have met the difficulty by dividing this class? A sufficient number, to supply vacancies in the higher ranks, might have been retained as Junior District Superintendent, (the nomenclature might present misunderstanding and confusion,) in the position and on the pay suggested by Colonel Bruce, while all the rest might have been retained under their present designation, with promotion to grades of pay, but not to the higher grades of rank. The plan is a simple one. It would have met all Colonel Bruce's objections, and it would at length have given us the great desideratum of a system of thorough supervision thrown broad-cast over the land.

Lying in the midst of all his arguments and objections, we come, in Colonel Bruce's final report, across the following significant admission,—an admission which clearly gives the key to his whole course of action in the matter: 'If we could afford,' he says, 'to give one hundred and fifty really *well-paid* officers, of the proper '*quality*, instead of only one-third of the number, I do not mean 'to deny that the efficiency of the police would be augmented.' After an admission such as this, and after having suggested a simple remedy to meet the only objections that Colonel Bruce really seems to have, we feel that we need occupy but little space in meeting his other arguments upon the matter. He urges that the subdivisional assistants will be very apt to fight with the subdivisional magistrate. We are afraid that there is too much truth in this, but the argument is unfortunately one not confined to these lowest grades, but pervading the whole relations between the police and magistracy. We believe, however, that in the lesser grades it would shew itself if anything less than elsewhere, because the superiors on either side would to a certainty unite to suppress it. Any Magistrate or any Commissioner worth his salt, would never suffer it to assume a hurtful degree. He urges that the assistant's authority would tread so closely on that of his District Superintendent, that it would be productive of disagreement between them, and constant references to higher authority, and to a return, but in a worse form, to that isolation

of the police, which was so bad under the old system. We are surprised to hear any such confession of weakness and inability to manage their subordinates on the part of the District Superintendents. The scheme of subdivisions is not a new one; it has had its full and fair trial; it is now in force; and it has led neither to disagreements nor isolation in other matters. If an arrangement were made upon precisely the same principles for the police, there can be no reason why such results should take place, unless the District Superintendents are wanting in that power of controlling their subordinates that has always been shown by the Magistrate. We do not believe them to be wanting in any such power, or that the subdivisional system could possibly be evil on the ground that Colonel Bruce has given. If it has been so in a case or two, the proper remedy would be to make severe and unmistakeable examples of those cases. Colonel Bruce's ideas of eradicating a blemish from anything, seems to consist in eradicating the whole thing itself, sound parts, blemish, and all. It is as though a physician were to recommend amputation of the head as a fitting cure for headache.

The last objection urged is, that subdivisional assistants are an unnecessary expense, on the score that any well-paid Inspector can do their work as well, and he calls the assistants 'merely Inspectors hoisted up into positions which they do not understand.' We deny—emphatically deny—that any Inspectors can take up, or, ought to be allowed to try to take up, the duties of Assistant Superintendents. The misdeeds to which native officials are prone, are much too consonant to the native mind, much too little regarded by it in the light of evil, to meet that thorough and decided antagonism which alone can avail against them. Indeed, from natives, who are themselves police officers, it is not rational to expect any antagonism at all. It must be beyond question, that European supervision, even if not absolutely *essential*, as we believe it to be, must be far more excellent and trustworthy than that of native Inspectors, especially those of the present day, who must have far too much sympathy with their successors and former companions, and who only represent the class of men secured by their former pay, and not such as might have been secured by their present. We can only look upon money so spent as to fall short of the object in view, as a waste and not as economy. But as to their being hoisted into a position that they do not understand, this *is* a startling objection. If there be any force in this, it applies to the whole body of the new police, but with least force of all to the subdivisional assistants. With the most valuable exception of Colonel Bruce himself, was there even one of the whole of the new officers

who had any experience at all in the civil police, or of whom it might not have been said, with at least equal justice, that he was hoisted into a position which he did not understand? And is it not true, that those who come into daily contact with the *thannah officials* and *thannah work*, would probably acquire a knowledge of their duties far more perfectly and far more quickly than other grades? This argument of Colonel Bruce's seems to us to be of less than no weight.

Having at length completed our survey of the new system of supervision, we now take up the other essential item of reform, *viz.*, pay. There is certainly little enough to be said upon this point, though that little is sufficiently startling. The simple facts of the case are, that from the introduction of the new system up to the 1st December 1865, the officials at the thannahs, (and it was only there that the reform of pay can be of avail, only there that it can be a reform at all,) have actually been receiving less pay than was given in the days of darogahs; while since the 1st December, they have been receiving as much only, but no more; and this, too, at a time when the general rise in price of all articles had made the pay, in fact, much less than when it was awarded to the old police.

We forbear to comment on or characterize this line of conduct on the part of the Government, for nothing that we could say could be more convincingly, more absolutely, condemning than the simple statement of the fact. It is needless, too, for us to point out how overpoweringly this, when combined with the other causes that we have mentioned, must have increased the policeman's already gigantic temptations to make himself infamous,—more infamous than he was before. Deficient pay has always been the very spring and source of all his corruption. It is now left to supply motive and will, when their dress, their military shew, the awe that these have struck into the natives, and all their former facilities to do ill, have combined to give them greater power than ever to abuse their position for their private gains and ends. We need take up no time in arguing upon the deplorable insufficiency of the pay given to the present thannah officials, with those who argued so strongly on the deplorable insufficiency of the same pay, when given to the former thannah officials. Considering that all sides, including even those who have introduced the present rates, joined in hooting down the notion that the old pay was anything but an excuse for corruption, it is simply astounding to find that the new system commenced by paying the thannahs even less than they received formerly, and that the so-called reform merely ended by bringing back matters to where they were.

It will be seen that we make no account at all of the grade of Inspectors, as they now exist, and we do so purposely. Taken altogether, it is not a numerous body, and the pay given to them all is not so much of an increase upon the total pay given to the old highest grade of darogahs on Rs. 100, and to the old special darogahs on Rs. 200, who used to work actually in the thannahs. But now-a-days after subtracting those who are Europeans or Court Inspectors, or Inspectors of the reserve, there are hardly as many as two or three Inspectors in a district, who reside at a thannah.

Those who do so reside, never have the charge of only one thannah, but nearly always of all comprised in a subdivision. The exceptions are so few, and of such limited importance, that their existence simply proves the rule, and that rule is that the modern Bengal thannah is left to the charge of only two officers, who draw pay which has only lately been raised to an equality with that of the two higher grades of the former thannah officials. But even if it were the case that every Inspector did engage himself in the work of the thannahs, it would still be true that owing to the slipshod, vacillating manner in which the change has been carried on, there would have been no advantage derived from the increased expenditure in pay as regards the quality of the men. When the new system was introduced, there was a golden opportunity lost of getting rid of the old class of men who used to enter the police, which class had been weighed and found so grievously wanting. It is true that instructions to this effect were issued, and that many (but not nearly many enough) of the old lot of darogahs were dismissed, but to do this was not, and could not be, sufficient in itself. It was necessary not merely to get rid of the men themselves, but also to supply their places from a higher and more respectable class, than had as yet thought it worth while to make the police their profession, but no steps whatever were taken towards this.* On the contrary the same

* Unless, indeed, the appointment of certain Lieutenants of the former Police Battalions may be considered such, we cannot ourselves think so. It would have been a sufficiently fatal bar to their success, that they were foreigners utterly unacquainted with the language and people of Bengal. They might have made very useful men in their own country. We must not be understood to be impugning their respectibility, which we do not doubt when we add, that the greater number of these were uneducated and utterly illiterate. The writer can speak personally of one district, in which the only three available thannahs were deliberately, and after warning, made over to three Police Battalion Lieutenants, who not only did not know a word of Bengallee, but were unable to read or write in any language on the earth. This inexcusable disregard of what is required at the thannahs is of a piece with the rest; the one reason assigned for making the appointments and keeping to them was, that the men had a claim upon Govern-

old rate of pay was kept up, which every one knew admitted to be insufficient as an inducement to the better order of natives. The consequence was, that even where new men were procured, they came from the same old class that had supplied the former disreputable darogahs, and it was not till Government had thus irrevocably hampered themselves with the very class of which they had striven to free themselves, that a rate of pay was at length allowed, which would have at once procured them, not only new men, but men of a higher and respectable class, whose characters would have been of value to them. Lastly, to make the error thorough, to prevent the advantage of this pay extending itself to the thannahs, even after the lapse of the present incumbents, the proceeding was appropriately capped by moving the recipients of the new pay away from the thannahs. We think it would be very difficult, indeed, to find a parallel to such mismanagement as this.

What we have said of the Inspectors and their pay applies also to the head constables. These men are in no way better than ordinary rank and file, and have done nothing to render themselves worthy of the post they occupy. When the force was enrolled, it was necessary to appoint a certain number of head constables, and as nothing was then known of the new men, the selections were necessarily made, if not actually at random, and all events on the very slightest of recommendations. For the duties they were at first required to perform, this did not so much matter; they were to receive pay but little in advance of that of the constables, and they were expected to act as a sort of serjeants towards the rank and file, and to fill the very subordinate position vacated by the thannah jemadars. The selections were in accordance with these simple requisites, and the men were fit for nothing more. But now in strict consistency with that strange spirit that seems to animate the rulers of the police, and which induces them to act as if the merely calling a man an officer was in itself sufficient to make him fit for the office, these same men selected for very humble duties, and never

ment. We would ask, had the unfortunate inhabitants of those three thannahs no claim upon Government as well? Were they to be sacrified in crowds, in order that the Government might cheaply show its recognition of a few individuals of the Police Battallion? Is there not something in this to remind one of that Mahometan system of military rewards, at which Europeans hold up their hands in horror? It is obvious that no one has a right to show gratitude to one man, at the expense of justice to another; and the case becomes clearer still, when the injustice is inflicted upon large numbers. Robbing Peter to pay Paul is not generally considered exemplary, but in instances such as this, Paul is paid by the robbery of the whole twelve Apostles.

having exhibited any qualifications for higher ones, are suddenly thrust into very important post of second officers in charge of a thannah, and are expected to supply fully the post of its chief, on the numerous occasions when he is elsewhere engaged on service. Elected as they were, they are *of course* totally unfit for so vitally important a post, but the pay which is now thrown away upon them, and of which they are altogether unworthy, might easily have procured men who are superior to them, at least in the same ratio that the old thaunah mohurrir was superior to the thannah jemadar.

We cannot agree that even the constables are in an improved position with regard to the old burkandazes. On paper, they receive more, but after they have been cut for their clothes and pension fund, we doubt much whether with the present high price of all necessaries, the balance of their pay goes further than the burkandazes carried theirs, if so far. We most cordially admit, however, that under the present system of enrolment, the rank and file of the police is incomparably better held in hand by their European superiors than ever was the case formerly.

In concluding our survey of the supervision and pay, we have done with the pith and marrow of our subject, and we can afford to pass over in silence many minor points. We will not comment, therefore, upon matters of no more importance than the strange nomenclature, which has been introduced to the bewilderment of the Bengalees, except to say, that as there seems to have been no earthly necessity for it, we suppose it was done for the fun of the thing. We can imagine a tender 'griff' being taken out by his friends to shoot 'Niskpokters' and 'Konnish Topples'—'fierce beasts with beautiful coats, and very plentiful 'in the district, where they roam about mauling the defenceless 'villagers, and committing sad havoc on their little crops.' Such a thing would have much of the advantages of instruction by allegory.

There is, however, one matter to which we have before alluded, and which we wish to speak of now more fully. We think that the more than semi-military training and dress of the police is a mistake of no small importance. We think it a very unfortunate thing that Lord Canning's instructions on the matter of dress, delivered to the Police Commissioner, have been departed from, for the subject is far from being as trivial as at first sight it looks to be. He desired that the clothing, though uniform, should be of ordinary material, and as much like the ordinary civil dress of the country, as possible. Had this been adhered to, the police would have numbered among their body many of the

more intelligent and educated natives who have avoided it, because they have a natural objection to be well slanged by a rough drill serjeant, and to making themselves laughing stocks by appearing in garments of that European cut, which usually sits so badly upon a native. But this is the very least of the evils. The drill is absolutely necessary for police, who may have to act against large bodies of rioters, and the discipline which results from drill, is not only most desirable, but is, perhaps, unattainable by any other means. But it cannot be contended that a *civil* police should constantly go about armed and clothed in military fashion, and that a constable should rarely be seen on duty without his bayonet and loaded musket.* Let the discipline and the skilled use of weapons be there, but let them not appear till they are wanted. It is on this system that the London police is conducted, and we think the police of London a far more wholesome example to follow than the *Gendarmerie* of Paris. It is not consonant with the principles of free government to be constantly holding over the people a military force, or even the show thereof, and the effect in Bengal is peculiarly unhappy.

The Bengalees look upon the English as foreign conquerors who hold the country by the sword. They are timid and ignorant beyond all nations of the earth, and they are as impressible as children. They look upon an armed man in authority, even if he is only their Zemindar's *lătteal*, as a dangerous and dreadful being, who is irresistible, and whom it is wise not to attempt to resist. When they see a body of man armed and uniformed and in the pay of Government, nothing will convince them that they are not sepoys, and they would as soon thwart a sepoy in his lightest wish, as a negro slave would spit in his owner's face. Thus do they consider the military looking constable; but armed as he is, with his police authority into the bargain, he becomes a grander and more terrible creature; he is not merely a sepoy, but is invariably addressed as 'Sepoy Sahib.'

Now, when a native regiment on the march passed through a native bazaar, the sepoy had generally a fine time of it. He strolled about with an air of superiority, affably picking up a small *buckshish* at one booth, and naming his own price for what he wanted at another, till he was satisfied, while the bazaar men treated him with great deference and respect, always acquiescing in his bargains. But still the sepoy's stay was short, and he laboured under the disadvantage of a discipline that was *not*

* Perhaps, this will be stopped after some stringent Superintendent Sahib has been shot by some offended 'Sepoy Sahib' on duty.

merely semi-military, and under the close presence of his officer. The 'Sepoy Sahib,' however, does not feel any of these disadvantages, and he is always at the place, and, moreover, always there in a position of authority. The men are not long in seeing their advantage, and a constable in the neighbourhood of a bazaar is simply a pest to the small traders. This evil is one that is two edged and acts both ways. Its effects on the people are most lamentable. The proper relation between the public and the police does not exist. Instead of regarding the police as public servants, whose services they can command as a right to the utmost extent, the public (that is, the large majority thereof, as represented by the mofussil residents) look upon the police much as the inhabitants of a conquered city look upon a well-disciplined army that has subjugated them. They feel nothing of the independence of a state of freedom. They have no idea of insisting that the police shall be what they pay them to be. They do not go to them as servants who must act for them to the best of their powers, or be brought to punishment, but they regard the police ever as their masters. They request their services as a favor; they look upon their moderation and respect for civil order as most exceptional matters, liable to be broken through on a small provocation, and well-purchased at the expense of slight injuries and annoyances, which they, therefore, willingly acquiesce in. This evil extends far beyond a consideration of the mere wrongs to individuals, for where so servile a spirit pervades the masses of the community, it is a fearful and dangerous source of weakness to the State.

To the policeman the results are more directly harmful. The peccadilloes (if they may be so called), that he first indulges in, are amply sufficient impetus to start him in the downward course, on which, when he has once entered, he goes rolling onward faster and faster, till he reaches the lowest depth. His sense of uprightness once blunted on small matters, the rest will soon follow; and crimes which are already most easy to this position, will soon become most easy to his conscience too. It is no excuse to urge that the relations, that we have described as existing between the police and the public, will exist under any circumstances. We believe this to be true, yet it is no reason for making the circumstances as bad as possible, but the contrary. The military show of the present force can only have the effect of confirming and increasing the natural servility of the people towards public servants, in a manner which the very existence of that servility renders inexcusable. If the constables were deprived of the fictitious blaze of military splendour, with which, in the eyes of the populace, they are now invested, and performed their civil duties

in an ordinary civil garb, they would themselves be far less exposed to temptation, and the people be far less willing to acquiesce in their misconduct.

The project of schools for recruits has fallen through, simply because recruits will not come forward. So little eligible has the police of Bengal been made, that instead of having spare recruits anxiously waiting for vacancies, it would have been impossible to fill the ranks at all, if the Government in their despair had not allowed no less a proportion than 32 per cent. of foreigners to be enrolled. In some places, a pretence is kept up of teaching a few grizzly-bearded up-country men in the Reserve, the language of Bengal, but, in most places, even this futile pretence has been abandoned. As to the character of constables, the less said the better. It is unfortunate, but true, that no small proportion have previously had police experience from a point of view very different to their present one, and that they have been already made acquainted with discipline, as it obtains in jails. In short, the intentions of enrolling none but men of respectability, and of educating a body of recruits, have been transported to a hotter climate than Bengal, where they now appear in the form of two very large paving stones.

We have far exceeded our intended limits, and must now hasten to an end. So atrociously bad was the old police, that to make a marked and startling improvement on it, was a matter very easy of accomplishment; an unquestionable improvement might have been made even by a new system in itself very different. Accordingly, we have often heard great astonishment expressed, that a system, thought out by men of such undoubted ability as Colonel Bruce and his fellow colleagues, should have resulted in no improvement at all.

Though we feel a deep and sincere disappointment in the matter, we do not share in the astonishment; for the reason of the failure seems to us sufficiently clear. The new system has failed for the same reason that every other attempt at police reform has failed, because it has not gone to the root of the matter, because changes have been made in the wrong place, because it has not acted upon the obvious, the demonstrated fact, that reform to be effectual, must be directed to the thannahs. It is there that the police acquires its character. It is there only that the people know them, there that all the power for good or evil lies, there that all the mischief has been done, there alone, in short, that the police really exists. Reform there is reform everywhere, but reform elswhere is no reform at all. For a few months, at starting, there was promise that at last thannahs would be attacked, but now every vestige of such promise has been swept

away. Valuable money was thrown away upon an Inspector General and his Deputies. The close immediate supervision by Europeans, acting within areas wherein their supervision could be real and effectual, was deliberately abandoned. The police of a whole Zillah were again, as in former days, placed under the charge of but one officer and his assistant, residing at the sudder station; and this officer, unlike his predecessor, was deprived of the aid of the subdivisional officers. Good pay was not offered, till it was too late to provide good men. The recipients of the new pay were then at once withdrawn from the thannahs, and men who had been selected anyhow, merely as semi-military corporals of a semi-military force, were suddenly thrust into the responsible post of second officer in them. In fact, all the extra money allowed for the new police, and all that was saved by the abandonment of a system of real supervision, was lavished upon men who were of no use at all, and upon all the higher ranks, till the thannahs were left just as they had been before. Nay, the highest executive, and the highest judicial, authorities combined to restrict the already limited application of that which had been announced as the guiding principle of the new system, which was to protect an accused man from his prosecutor becoming his Judge. A reform thus conducted, seems to us to be at once expensive and ineffectual, extravagant and stingy, pretentious and slovenly.

The old thannahs were bad altogether, because the men were bad, their pay was bad, their temptations vast, and the supervision over them so limited as to be insignificant. And what is the difference between the old thannahs and the new? In the new we have two officers only against three in the old. The second officer in the new is far inferior to the second officer in the old. The pay is as it was before. The class of men who accept this pay is as before, (because a better one could not be obtained for the money), and the temptations are at least as great as ever they were. As to the supervision, it is as before confined to one European officer and an assistant to a whole Zillah, and these are engaged to no small extent in office work. We assert without fear of contradiction that no man can possibly bring a close and effectual supervision,—a supervision worthy of the name,—to bear upon such areas as are comprised in the Bengal Zillahs. All this being the case, we repeat the assertion made at the commencement of our paper, that the police have drifted back into the old difficulties and dangers that formerly and all along have beset it, that it is being wrecked on the very rocks that sunk the old police, and which were fairly charted down to be avoided, and that the new police is, as regards the old one, merely a distinction without a

difference. With still the same class of men, (and often the very same men) at the thannahs, with still the same pay, and with still but one man to supervise, what ground in reason could there have been to hope for an improvement? It was as obvious that none could take place, as that none has taken place. We should be glad to believe that there has been no change at all, but when we consider that the pay now-a-days goes a far shorter way than it did formerly, that the people are more in fear and awe of the new men, and that these men have thereby obtained more power than ever, it will be very difficult to convince us that there has not been a change for the worse.

But let it be admitted that things are not worse than, but only as bad as, they were before. They are then far worse than is needful to justify our argument. The former state of things having been admitted to be atrocious by all who were concerned in the matter, we need not descant upon their present state. It has been pain and grief to us to see the new system, from which we had hoped so much, thus fall back upon the miserable plan of the old one. But it cannot last for ever. If we read aright the signs of the times, the days are coming when the cry of Bengal will fall upon the ears of men who will not be deaf to such appeals, of men able and eager to stand between the people and the plague, and to stay the plague for ever. Supposing that such a Committee were to be appointed to-morrow for Bengal, as was appointed formerly for the torture cases in Madras, is there any one now engaged in carrying on the government of the country who would not dread a fearful exposure? Is there a single Bengal official of half a dozen years' standing, that would not feel in his heart that Bengal would reverberate with much the same sort of crash as has been heard ere this in Madras? Sooner or later such a Committee *will* sit, and the sooner the better, say we.

ART. V.—1. *The Land-tenures of Upper India.*

2. *The Periodical Press of the day.*

AMONGST the numerous changes that have taken place in public opinion on different Indian subjects within the last century, there is, perhaps, none more decided than those that have arisen in regard to the theories of land-tenure.

Many a good man and true lent his willing aid in bringing out and improving those numerous and excellent regulations, which have in many instances remained, to this day, the unaltered law of the land. Originally designed for the limited tract of country which we now know as Bengal Proper, to which they were, no doubt, admirably adapted, their scope was subsequently extended to the more recently acquired territories, which we now style the North-West Provinces, without, perhaps, that careful enquiry into the fitness of things, which alone would justify the substitution of even the best considered laws, for customs that had existed for ages.

In making this assertion we write advisedly. The process of investigations into the status of landed property known alike as a settlement, a regular settlement, and a revised settlement, was only undertaken by us in Upper India under the operation of Regulations VII. of 1822, and IX. of 1833. The adjustment of the Government demand had already been effected under Regulation XXV. of 1803 on several different occasions, and settlement had been ordered to be made under that law, with the parties in *actual proprietary possession* of their estates, whether they might be called Zamindars, intermediate Talookdars, or be known by any other name; and to the entire exclusion of those who were the mere intermediate channel of receiving the dues of Government. Section 34 of the Regulation just quoted, does indeed briefly set forth that 'the Governor-General in Council further declares the proprietary rights of all Zamindars, Talookdars, and other descriptions of landholders, possessing a right of property in the land comprising their zamindaries, talooks, or other tenures, to be confirmed and established, under the authority of the British Government, in conformity with the laws and usages of the country;' while another Section gave the right to alienate and transfer property. But with these exceptions the whole tenor of the Regulation goes to show that it is treating of leases only, for

it distinctly contemplates the contingency of other parties with, perhaps, better rights, coming forward to claim them at a future settlement. This view is confirmed by the preamble of Regulation VII. of 1822, which, in referring to the revenue arrangements in force when that Regulation was promulgated, calls them 'the existing leases;' while it provides for the 'ascertaining, settling, 'and recording the rights, interests, privileges, and properties, of 'all persons and classes owning, occupying, managing, or cultiv-'ting the land.'

It is obvious to remark that if *proprietary right* had been conferred in 1803, these tenures would not have been called *leases* in 1822, nor would they have required *settling* then, nor would there have been any reason to apprehend claimants with *better titles* coming forward at a subsequent settlement. It, therefore, appears reasonable to suppose that all that the Regulations of 1803 did, was to intimate the intention of Government thenceforth to admit and recognize proprietary right in land, whenever that should be judicially determined, such right according to Indian theory having been, up to that time, vested in Government.

It is none the less obvious that the instructions then issued by the Government of even that day, contemplated the maintenance of *Talookdars* in those villages at least, of which they were in *bonâ fide proprietary possession.**

We should like to know how these instructions were carried out prior to 1822, and what amount of enquiry was made to discriminate between (1) the villages in which the Talookdar was a mere revenue collector; (2) those in which he obtained a certain beneficiary interest; and (3) those in which he was absolute proprietor. We have little doubt that, whether sound discrimination was exercised or not, the Talookdars had been deprived of much of their property in a very summary fashion, before the issue of the regulation in question,† and long before the regular settlement was even commenced.

It will thus be seen that more than a quarter of a century had passed and gone, before the Government officers of that period were required to satisfy themselves in regard to the then existing land-tenures; and during this long period what

* *Note.* We would here remark that in the regulations framed at the beginning of the century, the nomenclature of Bengal in regard to tenures was adopted by our lawgivers, the larger proprietors being called Zamindars, the smaller Talookdars. But in treating of Upper India, the terms should always be inverted.

† VII. of 1822.

changes must, in the ordinary course of things, have taken place?

All the accidents to which property is still prone were even then in full force; extravagance, minute subdivision, dissensions, and the thousand and one other causes, which lead to the frequent mutation of possession, were as rife then as now. The sharp-witted court Harpy and the usurious city Shylock were as ready then to re-place those who had long held possession, as they are now; and it was only after a long term of years, during which such influences as these had been in full and unchecked force, that the settlement officers of the last generation, with neither experience, nor circulars, nor directions, to guide them, were set to discover and to stereotype what they considered to be the prevailing tenures in land.

Able and good were most of the men then chosen to be the pioneers of our subsequent settlement system. But, alas! they were not long left to follow their own bent in regard to recording things as they found them. Well would it have been for many a landed proprietor, who has since been driven by our revenue system from his paternal acres, had many of our first settlement officers been left to follow what seemed good in their own eyes. Many of these would then assuredly have recorded things as they *did* find them, and not things as they thought they *should be*. But this could not be: centralization is a principal feature of our system; dearly do we love, and often pay for, uniformity; and it is not always the case that the central authority is a single individual;—it may be represented by a body of two or more men. So it was in this case. The consequence was a disunited, incongruous Board. Then raged in all their bitterness the wars of the Birds, and the Thomasons, and the Boulder-sons,—giants one and all in the science of revenue administration,—of whom we may ever well be proud; but even these, with the rest of the human race, were subject to error, and that they did make mistakes vast and frequent, no one will venture to deny. Then it was that the question of large or small proprietors, Talookas or non-Talookas, was vehemently discussed, and then it was that the landed gentry were finally and irrevocably, as far as the older provinces are concerned, re-placed by the, at that time, popular village system.

Every officer of that day from force of circumstances soon became a partisan, and it is to be feared, as is in fact but too often the case on such occasions, that after the first stone was thrown, the rights of parties were allowed to suffer in the general confusion and bitterness that were the result of the conflict; and thus it often came to pass that things that *ought*

to be, were more frequently entered in the records of that period, to the exclusion of things that *were*.

The party that had 'village communities' for their war cry were in numbers, influence, and ability, alike superior to those who advocated the policy 'of a landed aristocracy,' and the former being in power, of course made the most of their vantage ground by nominating to the department, which had the whole matter in its own hands, disciples of their own school. Young men were mostly chosen who were not troubled with pre-conceived ideas, who had clear intellects and pliant minds, and whose promotion, they were led to understand, would be rapid or otherwise, in proportion as their proceedings were appreciated or the reverse. Two collectorships within the knowledge of the writer were obtained at an unusually early period of service, avowedly as the reward of settlements rapidly made. In the one case the name of the officer is to this day a household word in his old district, and this, though his own proclivities were rather in the direction 'of bolstering up decaying houses,' as the attempt to uphold large properties, was then called. In the other case the settlement was an unfortunate one from the first, and it has been a source of trouble and anxiety to the authorities ever since; the reward, however, was duly achieved.

With such facts as these within our knowledge it may, we think, be fairly assumed that the land tenures of the North-West Provinces had scarcely fair play. They were investigated after they had been lying dormant for more than a quarter of a century, and the enquiry, when it was eventually undertaken, was not approached in that calm, impartial, and deliberate spirit, which should guide all judicial officers in the investigation of the most difficult class of civil suits, which it may ever be their lot to try.

Moreover, there is a very large class of cases which, we are afraid to say, were not investigated at all, and in which minor rights, adverse to the interests of the village proprietor, were either assumed to exist, and were, therefore, stereotyped for ever; or they were openly created, and at once permanently recorded.

Two fine opportunities have been offered us in later days of thoroughly testing and, if necessary, correcting our past proceedings in the matter of land-tenures. The first of these was in the Punjab, the next in Oude. In the case of the former province, although liberal views and enlightened reforms in regard to jageers and other tenures were the special hobby of its Board's first President, the lamented Sir Henry Lawrence, 'who to the last tried to do his duty,' but little was achieved in that direction. India was not yet ripe for the changes in opinion

that have since taken place in respect to tenures. The old groove could not as yet be abandoned, and a certain proportion of the tools that settled the North-West Provinces having been introduced into the newly acquired territory, all interests in land were disposed of in accordance with the experiences and views that had up to that time remained predominant.

But in Oude we had a still better opportunity of mending our ways. Tenures in the Punjab may have been different to those in the North-West; perhaps, talookas were unknown there, though the large jageers must be akin to them; but inasmuch as the North-West Provinces and Oude were originally one and the same principality until we separated them, it cannot be denied that the tenures in both, as long as the native rule continued, must have been the same also, and that any subsequent changes that may have taken place, must have been of our ordering.

We have already shown in detail what our procedure was when we took possession of the ceded provinces. When we occupied Oude after the rebellion, we confiscated all rights save those belonging to half a dozen loyal subjects, but in the end we restored to all, with but few exceptions of obdurate rebels who rejected the Queen's amnesty, the rights which had existed within a certain term previous to annexation. We furthermore ordered the maintenance of the *status quo* of possession, until rights could be investigated at a regular settlement. We thenceforth inaugurated an entirely different policy. The village system had already been tried at annexation with marked disfavor, and there is no doubt that the sentiments of Lord Canning, as quoted below, were also those of the public of that day:—

'Recent events have very much shaken the Governor 'General's faith in the stability of the village system, even in 'our older provinces: and his Lordship is, therefore, all the more 'disposed to abandon it in a province to which it was unknown 'before our rule was introduced in 1856. The Governor General 'is well aware, that in some of the districts of the North-'Western Provinces, the holders of villages belonging to 'Talookdars, which had been broken up at the settlement, 'acknowledged the suzeranity of the Talookdars as soon as our 'authority was subverted. They acted, in fact, as though they 'regarded the arrangement made at the settlement as valid, 'and to be maintained, just as long as British rule lasted, and 'no longer; and as though they wished the Talookdar to re-assert 'his former rights, and resume his ancient position over them at 'the first opportunity. Their conduct amounts almost to an 'admission that their own rights, whatever these may be, are

'subordinate to those of the Talookdars; that they do not value 'the recognition of those rights by the ruling authority; and 'that the talookdarie system is the ancient indigenous and 'cherished system of the country. If such be the case in our 'older provinces, where our system of Government has been 'established for more than half a century, during twenty years 'of which we have done our best to uphold the interest of the 'village occupant against the interest and influence of the 'Talookdar, much more will the same feeling prevail in the 'province of Oude, where village occupancy, independent and 'free from subordination to the Talookdars, has been unknown. 'Our endeavour to better, as we thought, the village occupants 'in Oude, has not been appreciated by them. It may be true 'that these men had not influence and weight enough to aid 'us in restoring order, but they had *numbers*, and it can hardly 'be doubted that, if they had valued their restored rights, they 'would have shown some signs of a willingness to support the 'Government which revived those rights. But they have done 'nothing of the kind. The Governor General is, therefore, of 'opinion that these village occupants, as such, deserve little con-'sideration from us.

'On these grounds, as well as because the Talookdars, if they 'will, can materially assist in the re-establishment of our autho-'rity and the restoration of tranquillity, the Governor General 'has determined that a talookdarie settlement shall be made. 'His Lordship desires that it may be so framed as to secure the 'village occupants from extortion; that the Talookdars should, 'on no account, be invested with any police authority; that the 'tenures should be declared to be contingent on a certain specified 'service to be rendered; and that the assessment should be so 'moderate as to leave an ample margin for all expenses inciden-'tal to the performance of such service. The Talookdars may 'then be legitimately expected to aid the authorities of Govern-'ment by their personal influence, and their own active co-opera-'tion; and they may be required under penalties to undertake 'all the duties and responsibilities, which by the regulations of 'the Government properly appertain to landholders. These 'duties and responsibilities should be rigidly exacted and 'enforced. With the declaration of these general principles the 'Governor General leaves the elaboration of the details to your 'judgment.'*

Thus wrote Her Majesty's first Viceroy. Let us place, beside these golden words, the opinion of the then Chief Commissioner,

* Paras. 34 and 35, No. 3502, dated 6th October 1858, by Secretary to Government of India, Foreign Department.

Sir Robert Montgomery, the connexion and coadjutor of Mr. Thomason in the Azimgurh settlement, the honored Lieutenant of our present Viceroy, and tutored by him, in the Punjab.

'The events of the rebellion had tended to shew that the 'entire release from a condition of subordination to the Talook-'dar, was not universally desired by village proprietors. In 'Oude, where the release was most recent, and where it might 'be presumed that the vivid recollection of the thraldom to a 'landlord, would render the holders of villages all the more averse 'to subject themselves again to the evils they had just escaped, 'the Talookdars were allowed to re-assert their former rights, 'and resume their ancient position without the slightest opposi-'tion. This voluntary return to the *status quo ante* showed 'clearly what the feeling of the people was.'

Being thus condemned, we may say, by unanimous consent, the edict went forth that the talookdarie was in future to take the place of the village system, and the status of the year 1855 was to be reverted to. So far was well. In the next step that was taken many persons can trace a blunder, to which may be attributed a good deal of the trouble and difference of opinion, that has arisen out of our Oude policy. It consisted in the adoption of a form of *sunnud* which had been prepared, by which the proprietary right was granted in each talooka, which was said to consist of, in the words of the document itself, 'the villages, as per list attached to the *kuboolent* you have executed.' Power was unfortunately not reserved to ourselves to correct errors of omission and commission, which might subsequently be brought to light. The lists indicated, were prepared by the native Per-gunnah officers at a time when we were only just recovering from a rebellion, and when a judicial enquiry could not be made, nor, indeed, was such aimed at: at a time, in fact, when we were suing the Talookdars to surrender and accept their estates, and when they were very far from supplicating to recover them! In the great desire to establish peace, and to get their districts reduced to order, the British officers completed their summary settlements on the basis of 1855, as ascertained from the canoongos. Then it was that Sir Robert Montgomery issued his well-known instructions conferring proprietary title for ever, 'whether right or wrong, certain principles have been laid down 'by the Supreme Government, and they are to be acted upon, 'and landholders are to be encouraged to feel that what they 'receive now they will retain for ever.'

This was followed up by the order of the 10th of October, 1859, and by the *sunnuds*, stereotyping Sir Robert's arrange-ments, as far as the Talookdars were concerned, his orders

having, in the meantime, been modified by Lord Canning in regard to villages not in talookas.

Would that the *sunnuds* had but contained a clause reserving power to amend palpable errors on full judicial enquiry. The omission of such a clause has been the chief difficulty with which the local administration has had to contend, the parent difficulty, we may say, of minor ones that have sprung out of it. In a few instances the proprietary title in (1) villages which had never been in the talooka at all in 1855 or in any other year, but which had crept into the lists by mere official carelessness; in (2) villages which had been mortgaged on the faith that they could be redeemed at the pleasure of the mortgagor; and in (3) villages held simply in trust during the convenience of the depositer were alike conveyed to the different Talookdars in virtue of these lists.

To take villages, such as those of classes one and two above, out of the *sunnuds*, has been the aim and object of one class of good and well-intentioned men. To maintain the *sunnuds* in their integrity, rather than do anything which might seem to have the smallest approach to an infringement of promises so solemnly made, has been the desire and difficulty of another class of just as good and well-intentioned men, and it is only by the tact and personal influence of Mr. Wingfield, and the good sense and feeling evinced by the Talookdars themselves, which has earned for them the warm acknowledgments of the Government of India, that this difficult question has at last been satisfactorily solved. It was out of the discussions arising out of this subject, that such minor collateral points 'as tenant-occupancy' have sprung.

The mistake of an hour of hurry and confusion which followed closely upon the steps of a rebellion must not, however, for one moment, be allowed to blind us to the many and vast advantages we have gained in the comprehensive lessons and experience, which the successful administration of Oude has since undoubtedly taught us. Many reforms have been most judiciously introduced during the tenure of office of the intellectual and accomplished statesman, who is now about to relinquish for ever the reins of his well-sustained Government, a gentleman who will always be favorably remembered for the conscientious and steadfast attitude which he preserved against the adoption of rights, which, it was thought by his opponents, *ought to be*, and for the noble stand he made, to have all rights, or no rights left, *as they were*.

It was a minor and most excusable mistake of the local administration to endeavour, before the operations of the

settlement had furnished the materials to point out and strive to define by circular the different descriptions of right, that the officers, whose business it was to discover them, might be expected to find. But no permanent harm has resulted from this error, because, in practice, it has been left to the judicial discrimination of the officers in question, to decree things as they find them, always keeping *bonâ fide* and well ascertained *custom*, which is, after all, the Settlement Officer's guiding star, steadily in view.

The settlement proceedings in Oude have produced a very great change, as compared with the former system of the North-West Provinces, in, *first*, procedure; and *secondly*, results; and well may the departing Chief Commissioner be proud of the great work he has achieved in these respects. In the North-West Provinces, under the former school, the investigations into tenures, where made at all, were made in the vernacular language, and frequently through the agency of native ministerial officers. We use the words, *where made at all*, advisedly; because it may not be generally known, and it will not be readily credited, that the large class of occupancy tenures, which exercise so important an influence in the agricultural prosperity of the country, were literally taken for granted in nearly all the districts of the Noth-West, without the smallest attempt to discriminate between the man who had, and the man who had not, a vested interest in his field, without any judicial enquiry whatever as to the origin of his possession, or the amount that he paid, or the length of period that he had held. It was enough, that when the settlement was completed, he was in occupation of a certain field at a stated rent. Then went forth the settlement edict that, for 30 years at least, the man so recorded, could not be ousted, neither could his rent for that time be raised.

A heterogeneous mass of men, with and without rights, were, under this indiscriminating system, thus at one fell swoop recorded to be alike entitled to hold on 30 years' leases at rents which could not be altered, except by a regular civil suit;* and ere their leases had merely run their course, Section 6, Act X. of 1859, became the law of the Empire, and converted one and all of these men into sub-proprietors of land that belonged to others.

But thanks to Mr. Wingfield, there is nothing of this sort in Oude. Every proprietary and sub-proprietary title is investigated by a European officer, and the record is made in his own

* *Note.* The law which produced this result was Sec. 9. Reg. VII. of 1822, and the printed circulars of the Board of Revenue, repeated in the directions to Settlement Officers, and not repealed till 1856.

hand and language, and no room whatever remains for any left-handed procedure, such as that which we have described. All settlement-suits in Oude must resolve themselves into claims to, *first* the proprietary, or *secondly*, the sub-proprietary, title in land.

Class I. Proprietary title may be acquired by (1) forest-clearing grant; (2) mortgage or purchase; (3) gift; (4) usurpation or conquest; and (5) hereditary descent, the original occupant being lost in obscurity.

Class II. Sub-proprietary title may devolve by virtue of former ownership, supported by fairly continuous subordinate possession; or it may be acquired by (1) purchase; (2) mortgage; (3) assignment; (4) gift; and (5) by lapse of rent-free holding.

All Talookdars and Zamindars, who pay their revenue to the officers of Government, either themselves or through their representatives, are *proprietors*, and belong to Class I. The Class speaks for itself, and we may dismiss it without further remark, confining our observations to sub-proprietors. All persons having a hereditary and transferable right in the soil, who pay their revenue to the first Class, and not to Government, are *sub-proprietors* according to Oude nomenclature and procedure, and belong to Class II. Amongst the latter, are—

Firstly, those who deposited their villages or estates on a system of trust, and who retained management and control till annexation; and also those whose villages were usurped, but who, through influence, policy, or favor, were permitted to remain in administrative possession, till the same period, and,—

Secondly, there are those who held under (1), *purchase*, and who are commonly known as Birtdars, Shunkulupdars, holders of gardens near towns, of compounds in certain civil stations, and such like. Under (2) *mortgage*, come the Bisweedars, Rehundars, and others who lent money on the security of specific lands, which lands by effluxion of time have become theirs. Under (3), *assignment*, are those who hold specific lands called Seer, Deedaries &c. &c., which they received for their support when they lost their property as former Zamindars, and which they have since retained rent-free, or at favored rates. We next have (4) gift-lands, (known in some places as Jeewun Birt,) conferred in some instances on the cadets of influential houses for their support by the proprietor of the day. And *lastly*, there are (5), the owners of specific lands that were formerly rent-free (*maafee*), but have been resumed and assessed by order of Government; the *ex-maafeedar*, for convenience of revenue administration, thenceforth paying his quota through the proprietor of the village in which the land is situated.

We have not mentioned these oriental terms with any desire to puzzle the general reader, far from it. We have done so to show that vested interests have been faithfully conserved in Oude, and we shall now show that, in this respect, the authorities there have not been one whit behind their brethren of former times in the older provinces.

The five classes just enumerated, it has already been explained, have in Oude been treated as sub-proprietors, as of course have those who placed their villages in trust, and those whose possession withstood the vicissitudes of the pre-annexation period. Their hereditary right to hold their land at such rate as they may have enjoyed within limitations, and to transfer it, has been judicially decreed to them by a British officer. In the North-West Provinces, these people were treated as non-proprietary cultivators only, some of them (Nos. 1,2, and 5) having hereditary and transferable rights there; and others (No 3) having a right of occupancy at a fixed rate for a given term, or for one or more lives. But under what precise process such rights were secured, it is not very easy now to ascertain; for, the printed Settlement Reports, the circulars of the Board of Revenue, and the directions to settlement officers, treat the matter with reserve, and all that we really know is, that such rights did not form the subject of judicial decree, for the settlement proceedings show that as a matter of fact, the occupancy and rents of these, and all other non-proprietary cultivators, (called non-proprietary by Mr. Thomason, because they were not in direct revenue engagement with Government), were alike considered fixed and determined, not by the judicial decree, be it remembered, of a British Officer, but by the simple extra-judicial process of publishing the rent-roll in the village for a period of ten days, when the settlement was complete, after which the position of *every cultivator* entered in that rent-roll (and none were allowed to be excluded), was to all intents and purposes that of a lease-holder for 30 years at a fixed rent.

We trust we have shown how much more secure and commendable is the Oude, than the North-West, system, in regard to these classes of tenure.

There is one description of the sub-tenures that has been incidentally named above, which requires something more than a mere passing notice. We allude to the different descriptions of *Birt*, which are found to prevail along the line of Sub-Himalyan districts.

These *Birt* tenures, we are well aware, were the subject of hot discussion when the settlements, under IX. of 1833, were

being conducted, but we do not know that any records now exist to which reference could be made bearing on these discussions.

These tenures, under the native rule, were invariably *subordinate*, that is, the holders, as expressed by Mr. Thomason, were 'non-proprietary, from not being in direct engagement with the Government.' There were various phases of the tenure, but without exception, such rights had their origin in the owner of the land. The two most marked kinds were the *purchased Birt*, and the *conferred Birt*. The *first* conveyed a sub-title for ever, and the right has, therefore, been acknowledged, and judicially decreed by the Oude Settlement Courts. The *last* was eleemosynary, and, according to general usage, pending the donor's pleasure only, and is, therefore, not cognizable by the Courts in question.

The incidence of the recognized *Birt* sub-tenure varies in almost every estate, but the most common feature is, that a landlord, being in want of money, or wishing to have waste land brought under cultivation, assigns a certain portion of land to a Brahmin or other individual, on the latter advancing him a sum of money. An annual rent in perpetuity, perhaps a low one, is generally fixed at the time,—or it is arranged that a part of the land shall for ever remain rent-free, and the rest of it shall be subject to future enhancement at the will of the donor—but, whatever the special conditions may be, the essence of the whole transaction is, that a sub-proprietary and not a proprietary title is conveyed, and that, according to immemorial usage, the *Birt* tenure remained in the parent estate as before. We are not quite clear how far the *perpetuity* clause, in such agreements as these, was respected under the native rule, or whether the sub-tenure continued to exist at all after the giver, his sons, and, perhaps, his grandsons, had died out; we rather think the tenure vanished then too; but of one thing we are, on the whole, well satisfied, and, that is, that nothing beyond a *sub-tenure* was ever conveyed under a *Birt* deed.

But what was the procedure of the North-West settlement in this class of cases? It was neither more nor less than to deprive the owner of his proprietary title; to transfer that title to the Birt-holder, making the settlement with the latter, subject to a money charge of 20 per cent. in excess of the Government demand, which sum, after realization in the usual way, the Government handed over to the unfortunate ousted proprietor from its own treasury, under the sympathetic name of compensation!

Supposing it to be admitted that it was a mistake of the administration, in its great respect for the late Viceroy's promises,

to wish, at all hazards, to maintain the Talookdars' *sunnuds* in their integrity, how trivial, after all, is that mistake compared to the one which we have just described, by which a man's property was taken from him and distributed amongst the creatures of his own creation, he himself being reduced to the position of a pensioned pauper!

In the Oude case, under the procedure adopted, the transformation is one in designation only; for the Talookdar will be upheld in the possession of the superior rights and interests he has hitherto enjoyed, whilst the sub-proprietor's tenure will with equal care be protected, and he will be maintained by us in the unfettered control of his land, provided that he pays the Talookdar the rent which is determined by the settlement officer. This rent will be the same as that previously paid under the native rule, except where such previous rent falls short of the revised Government demand; in which case it will be raised to the amount of the Government demand plus 5 per cent. This per centage to the Talookdar is the sterile and only remuneration allowed to him in such cases, for fulfilling the, by no means, sinecure office of *buffer* between the sub-proprietor and the native officers of Government, whereby the smaller holder is saved both money and inconvenience, in that most unpopular of all proceedings, *viz.*, the payment of revenue.

But in the case of the North-West, limitations to the contrary notwithstanding, all rights of property, such as had existed for ages, were ruthlessly swept to the winds, and without reference to the fact, that rent-rolls under our Government would daily improve a miserable 20 per cent. calculated on the rentals of that day, in a country then notoriously under-populated, was arbitrarily accepted by Government as full compensation for the loss of superior rights, and paid over, with much show of consideration, in half-yearly instalments to the men they had robbed. And, as if it was not enough to deprive the for-ever set-aside proprietors of any share in the profits which our improved administration might thereafter create, the compensation actually allowed was not to be paid in perpetuity. It has recently been cut down to 10 per cent., and the result of all this is apparent in the fact, that the dispossessed Rajas are now Rajas in name alone, while each sub-proprietary *Birtia* has developed into a hereditary Zamindar.*

* It may be mentioned that in the settlement of IX. of 1833, there was no attempt made to discriminate between a *purchased* and a *conferred* Birt-tenure. The man who had paid money for his hereditary title, and the man who got his tenure as a simple wound-pension for life, or as blood-money, from his feudal chief, was alike converted by us into *proprietor*.

We can, to a considerable degree, follow the cry for hereditary village institutions, and we can well understand that many a good man would wish to see the old village proprietors respected and fostered; but here, we venture to say, is the village system run altogether wild, and with no other apparent view than to foster a peasant proprietary, created by our own system at the expense of the aristocracy, which we found indigenous in the land!

In addition to the changes of procedure which the local administration has so commendably introduced, sight must not be lost of the great change that has been made in the substantive law of the land, since rights in property in the older provinces came under settlement,—a change, which has materially amended the system of operations. Under the former Law of Limitations (Cl. 3, Sc. 3, II. 1805), the settlement officer looked back for a period of 60 years for a valid proprietary title, and the most approved test of that title was, a well dug, an embankment made, or a grove planted, by some far off ancestor of the long dispossessed applicant. But the law now in force (Act XIV. of 1859) has restricted this search to twelve years; and fortunate it is that it is so, for our more recent experience has taught us that cultivators and others, without a vestige of right, had the privilege of constructing such works as those we have mentioned. To assume, therefore, on the simple fact of the existence of relics such as these, that the originator of them must have been the proprietor of the estate, appears to us to be as impolitic as it was unjust. Better far is it to leave such obsolete rights amongst the cobwebs of antiquity, than to create excitement and discontent by attempting to revive them, whether it be in entire estates, or in the shares of coparcenary communities. Better far is it to accept things as they have been within the memory of the living, and, in accordance with our modern legislation, accepting them, in fact, as we found them, and as the native Government permitted them to be, than to take up long forgotten and dormant animosities, which death alone could again allay.

How little understood after all are these Indian tenures! Simple enough they are to those who will really undertake to solve them,—to the settlement officer, who, with the blue sky above, and the green woods and fields around him, makes them his care. But how complex and uninteresting to the general reader, and, perhaps, to him who seeks to find his light through the spectacles of a native ministerial officer in the unsavory atmosphere of a crowded court.

One word in conclusion. We have sought to handle this subject in a spirit of candour and fairness. We have had our humble

share in working both the old and the new systems, under the great and good Thomason, and under the not less just, if less known, Wingfield, and we can, therefore, speak from personal without prejudice or partiality.

Ere this paper sees the light, the fame of these able administrators, the living and the dead, as far as Upper India is concerned, will alike pertain to the province of history. But though the men may be gone, their measures will be ever present with us, to be tested by their own merits, and, if we may judge of these, with the lights already at our disposal, we have no hesitation in predicting, that if the one will ever be affectionately remembered in the land, as the friend of the Indian peasant, the other will be none the less favorably kept in mind, as the preserver of some of India's peers.

ART. VI. 1.—*Histoire Naturelle des Quinquinas ou Monographie du genre Cinchona; par* M. H. A. Weddell, M. D. 1849.

2. *Illustrations of the Nueva Quinologia of Pavon,* with colored plates, by W. Fitch, F. L. S., and *Observations on the Barks,* described by John Eliot Howard, F. L. S., &c. 1862.

3. *Travels in Peru and India, while superintending the collection of Chinchona plants and seeds in South America, and their introduction into India;* by Clements R. Markham, F. S. A., &c. 1862.

4. *Copy of Correspondence relating to the introduction of the Chinchona plant into India, and to proceedings connected with its cultivation from March* 1852 *to March* 1863 (Blue Book, 20th March, 1863.)

5. *Reports on the Cultivation of Cinchona in the Neilgherries, Darjeeling, Ceylon, and Java.*

6. *Report on the Cultivation and Propagation of Chinchona in the Valley of Kangrá, Punjab;* by W. Nassau Lees, L.L.D., 1865.

7. *Pharmaceutical Journal.* 1862—1865.

THE rapid destruction of the Peruvian forests of cinchona, and the consequent necessity which existed for taking measures to prevent a total failure of the precious bark, long engaged the attention of scientific and thinking men. So far back as 1735, Ulloa urged upon the Spanish Government the organization of a forest conservancy, and he was followed by Humboldt and others who pointed out the disastrous consequences, which would attend the extirpation of the valuable quinine-yielding forests. The authorities, however, were only so far alive to the emergencies of the case, as to provide for the discovery of new tracts of cinchona, which soon threatened to be denuded in their turn by the ruthless age of the improvident

cascarillero. The subject was thus forced upon the attention of other European Governments, to whom a supply of the invaluable febrifuge had become an actual necessity. Experiments were made for the purpose of introducing and naturalizing the cinchona plant in other countries suited to its growth. But from the time when La Condamine's little cargo of plants was shipwrecked at the mouth of the Amazon, failure and disappointment only seemed to attend any attempt to transport the cinchonæ from their native forests. Even the Dutch, who were the first nation which succeeded in acclimatizing any of the species, have now discovered to their pain that the bulk of their plantations in Java are utterly worthless. It was reserved for Great Britain, whose vast Indian possessions at once created an extraordinary demand for quinine, and afforded peculiar facilities for the naturalization of the sources of supply, to introduce and cultivate with success an exotic of such incalculable value to the whole world. The remarkable progress, indeed, which the cultivation has made of late years in this country, and the confidence with which it is being extended on all sides by private, as well as public, enterprise, demand that we should take a survey of what has already been accomplished, and review the grounds for supposing that the cultivation will ultimately re-pay the trouble and expense which is being bestowed upon it. We shall endeavour in the present paper to bring together the results which have already been achieved in different parts of India, and thus by their aid deduce the prospects which may fairly be anticipated for the future.

The cinchona family is said to derive its name from Ana, Countess of Chinchon, a town in the kingdom of Toledo. This lady, when Vice-Queen of Peru in 1638, was cured of an intermittent fever, of which she lay sick in her palace at Lima, by a parcel of Loja bark administered by her physician Juan de Vega. On her return to Spain, she introduced the new febrifuge into Europe, and by this simple act of philanthropy immortalized her name. For some time the medicine was known only as 'Countess's bark' or 'Countess's powder,' and more than a century afterwards, in 1742, Linnæus established in her honor the genus *Cinchona.* Meanwhile, the tree itself went by the name of *quinquina,* or 'bark of barks', from the Quichua word *quina,* corrupted by the Spaniards into 'china,' the word still retained in homœopathic pharmacy; and in consequence of the medicine being largely imported and distributed by Cardinal de Lugo and the Jesuit missionaries, it was not unfrequently termed 'Cardinal's bark' and 'Jesuits' bark.' The novel drug was a long time in fighting its way to popularity, the most

absurd feature in the matter being, that doctors of theology took as large a part in the controversy as the most eminent physicians.

Although the bark was thus being imported into Europe, and winning itself an important place in the pharmacopœa of modern medicine, it was not till 1738, just a century after the discovery of the efficacy of its febrifugal qualities, that any description was published of the plant itself. In that year La Condamine, the chief member of the French scientific expedition to South America in 1735, described the 'quinquina' tree in the 'Mémoires de l'Academie,' and five years later he made the first attempt to introduce cinchona into Europe. His botanical labours in this direction have since been rewarded by the cognomen of *Condaminea*, which, having for some years superseded that of *Officinalis* given to the Loja species by Linnæus, has, on the restoration of the latter name, been awarded to that particular variety which La Condamine discovered on the mountain of Uritusinga. La Condamine's unfortunate coadjutor, Joseph de Jussieu, has also been connected with the history of this family in the shrubby variety of *C. Calisaya*, called *C. Josephiana*.

Thirty years later the Spanish Government, warned by the threatened extinction of the Loja forests, organized two botanical expeditions for the purpose of exploring the cinchona region in other parts of their vast possessions in South America. The former of these, headed by Mutis and his disciples, Caldas and Zea, investigated the cinchona of New Grenada, and discovered the valuable species *C. Lancifolia*. The latter expedition, entrusted to the famous botanists, Ruiz and Pavon, explored the forests of Peru; and it was their pupil Tafalla, who, in the prosecution of his researches, found the *C. Micrantha* in 1797. New and extensive regions of bark having been discovered, and the pressure upon the Loja forests being thus relieved, the Spanish Government appears to have considered it quite unnecessary to adopt any system of forest conservancy; and so long as the bark was forthcoming at the ports of exportation, the authorities exhibited little anxiety respecting the sources of the supply. An exception should, perhaps, be made in the case of Bolivia, where the Congress certainly did interfere, but where its interference will ever be held up to derision as an example of the most short-sighted policy. To quote Mr. Markham's words, 'instead of taking measures to prevent the reckless 'destruction of the trees, to establish extensive nurseries for 'young plants, and thus ensure a constant and sufficient supply 'of young bark, these Bolivians have meddled with the trade, 'attempted to regulate European prices by the most barbarous

'legislation, and allowed the forest to be denuded of chinchona-'trees.'

The next expedition for the purpose of acquiring information relative to the sources and supply of Peruvian bark, was organized by the French Government. In 1845, Dr. Weddell was attached to the scientific mission of Count de Castelnau, when he explored Bolivia, and discovered the valuable *C. Calisaya*. He subsequently penetrated into the provinces of Caravaya in South Peru, where he was joined by M. Delondre, a manufacturer of quinine at Havre. Although the valuable information acquired by previous botanists, including Poeppig who travelled in Chili and Peru, 1827-32, regarding the situation and properties of the various species of cinchona discovered, was of the utmost importance, if not absolutely necessary to the success of any project for the naturalization of the plant in other countries, this may be said to have been the first expedition from which any practical results emanated. To it we not only owe the famous 'Histoire Naturelle des Quinquinas,' but Dr. Weddell was enabled to collect seeds of C. Calisaya, which germinated in Paris and London, and from which, in consequence of the utter failure of Mr. Markham's expedition, the whole of the stock of that species in India, Java, and Ceylon, has been propagated. Before, however, we proceed further in our sketch of the steps by which this inestimable product was introduced into India, it may be expedient to notice the different species of cinchona with which we are acquainted, and which are, as far as our present knowledge goes, the most valuable for their medicinal virtues.

The region of the cinchona forests extends, generally speaking, along the eastern slopes of the cordillera of the Andes, from 19° south to 10° north of the equator through the provinces of Bolivia, Caravaya, Peru, Ecuador, and New Grenada, thus forming an irregular semi-circular belt over 1,740 miles of latitude. The C. Succirubra, yielding the *Cascarilla loja* or red bark, is the only species, so far as we are aware, that has ever been found west of this chain. The trees flourish in an equable temperature, the tenderer sorts descending as low as 2,500 feet above the level of the sea, while the more hardy rise as high as 9,000 feet. It is stated indeed as an ascertained fact, that the higher the elevation at which the tree can be made to grow, the larger will be the proportion of alkaloids extracted from the bark. There are five sorts of medicinal bark valuable in commerce, and as these are the only kinds likely to be cultivated to any great extent in this country, we shall confine our attention to them. As the various species of cinchona are in some degree distinctly separated and marked off as it were by zones of latitude, these five

sorts of barks are not unfrequently designated by the regions where they respectively flourish, and to which they peculiarly belong.

1. The genuine *red bark (C. Succirubra)* is found in the forests on the western slopes of Chimborazo, and is, commercially speaking, the most valuable of all—the yield in alkaloids being from 4 to 6 per cent. from tabla, and 3·6 per cent. from quills. The price for dried bark varies from 2*s.* 6*d.* per lb. to 8*s.* 9*d.* Though a large quantity of this bark has for some years been brought into the market, but little was known of the tree before Mr. Spruce collected plants and seeds in 1860 for its introduction into India. It is, however, the species which seems to flourish better than any other in this country.

2. The *yellow bark* of Bolivia (*C. Calisaya*) is next in importance to this red bark. It yields nearly 4 per cent. of quinine, and is sold from 2*s.* 10*d.* to 7*s.* per lb. This species was introduced into Europe by Dr. Weddell, and, thanks to his exertions, we have now a large supply both in India and Ceylon.

3. The *crown barks* of Loja or Loxa (so called from being originally reserved for the use of royalty) are procured from the *C. Officinalis*, of which three varieties are considered to be valuable; *C. Condaminea* or *Uritusinga*, yielding the original Loja bark, which has been nearly exterminated in the American forests; *C. Bonplandiana* or *Chahuarguera*, the rusty crown bark of commerce, which only comes now in quills; and *C. Crespella* or *Crispa*, a hardy plant yielding a 'fragrant and pretty looking bark,' called the fine crown bark. The extract of alkaloids is from 3½ to 4 per cent., and the price in the London market is about the same as for yellow barks.

4. The *New Grenada* or *Pitayo bark* is undoubtedly one of the most valuable, though but little known. Cross, who collected seeds in 1863, sent specimens of what he called 'the red variety', and which will probably be recognised hereafter as the true *C. Pitayensis*. From these specimens Dr. Jameson of Quito extracted 3·2 per cent. of quinine, and Mr. Howard obtained the 'surprising amount of 8·6 per cent. of alkaloid soluble in ether'. Unfortunately the seeds never germinated, and if it should prove a new variety, we are still without one of the richest barks. The common variety *C. Lancifolia* of Mutis is a hardy plant, and in exposed situations the bark will yield 2½ per cent. of quinine, and from 1 to 2 per cent. of cinchonine. By the exertions of Dr. Karsten, seeds of this variety were collected and sent to Java, whence all the Indian stock was subsequently obtained.

5. The *grey barks* of commerce are found in Huanuco in North Peru, and are chiefly valuable for the cinchonine they contain.

There are three varieties; *C. Nitida*, a hardy and lofty tree yielding the *quina cana legitima* or genuine grey bark; *C. Micrantha*, yielding the *Cascarilla Provinciana* which is greatly in demand for the Russian market; and *C. Peruviana*, so named by Mr. Howard. The bark yields from two to three per cent. of cinchonine, and fetches from 1*s.* 8*d.* to 2*s.* 10*d.* per lb. Seeds of this species were collected by Mr. Pritchett in Huanuco, and forwarded to this country, but though the varieties were kept distinct according to the names borne by the labels, the best botanists have as yet been unable to observe any distinguishing characteristics, and the whole are usually comprehended under the name of *C. Micrantha.*

Such are the most valuable of the 'Peruvian barks' with which we are acquainted—and through the exertions made by the Government in 1860-61, nearly all the species enumerated are now flourishing in this country. We have omitted all mention of *C. Pahudiana*, so named by Howard in honor of the exertions of M. Pahud, who, first as Minister of the Colonies, and subsequently as Governor General of Netherlands' India, did so much for the cultivation of the cinchona plant in Java. This species, introduced by M. Hasskarl who mistook it for *C. Ovata*, forms the bulk of the Dutch stock in that island, but, as the bark is now universally condemned as worthless for medicinal purposes, its propagation has not been extended in India or Ceylon.

The credit of precedence in recommending the introduction of cinchona into India, has usually been assigned to the late Dr. Royle, who mentioned the subject cursorily in his work on Himalayan Botany, in 1839. But the first official notice of the subject was the result of a paper published by Dr. Falconer in 1852, in the Journal of the Agricultural Society of India, (Vol. VIII, p. 13). In consequence of this suggestion, recommended as it was by the local Government, an attempt was made to procure seeds and plants from South America through Her Majesty's Consular Agents. Mr. Cope, the Consul in Ecuador, alone complied with the requisition, but the plants he forwarded all died on the voyage, while the seeds never germinated. Meanwhile, Dr. Royle had collected from the gardens at Edinburgh and Kew, six plants of *C. Calisaya*, raised from seed brought over by Dr. Weddell. They were entrusted to the charge of Mr. Fortune, then on his mission to China, by whom they were conveyed in Wardian cases by the overland route to Calcutta, where five of the plants arrived alive at the commencement of 1853. These five plants were kept in Calcutta throughout the hot weather and rains with the object of propagating

from them. The cuttings however died, and the original plants were sent up to Darjeeling, where three arrived in perfect health, and were planted by Dr. Campbell in his garden in the Station. The elevation of 7,000 feet, however, proved to be too exposed a site, and the plants were all killed by the frost during the winter, 1854-55.

During the next year, 1855, Dr. T. Anderson, the present Superintendent of the Calcutta Botanical Gardens, took up the subject again in the Indian Annals of Medical Science (Vol. V, p. 259), and recommended in particular the cultivation of the plant at Darjeeling, where, under his own auspices, it is now succeeding so admirably. Dr. Royle, having again reported favourably on the subject, was authorized by the Court of Directors to dispatch a botanical collector to the cinchona districts in South America; but his death unfortunately intervened before the necessary arrangements had been completed. At length in 1859, the hopes of those who had so long been urging this question upon the attention of Government, seemed in a fair way for consummation. In that year Mr. Clements H. Markham, a junior clerk in the India Office, offered his services as collector, and Lord Stanley, then Secretary of State for India, thought fit to accept them. It is not our intention to re-produce the criticism passed upon Mr. Markham's appointment both at the time and subsequent to the failure of his expedition. Suffice it to say that it was a fortunate circumstance for India, that the services of Richard Spruce, an excellent botanist, well-acquainted with the flora of South America, were secured at the same time. To this gentleman attaches the credit of having successfully performed the task allotted to him, and of introducing the most valuable species of cinchona which has been hitherto discovered.

Three different expeditions were planned for this enterprise, and their history may be told in few words. Mr. Markham himself visited the province of Caravaya in South Peru, where, during a sojourn of little over a month, he succeeded in procuring upwards of five hundred plants of *C. Calisaya*. Without waiting to collect seeds or attempting to penetrate into Bolivia—a part of his original plan—he returned to England with the plants he had collected,* and accompanying them in person by the overland route, arrived at Ootacamund on the 12th October, 1860. Cuttings were immediately made from the plants, but

* Mr. Markham had been authorized to charter a vessel for the transportation of the plants direct to India across the Pacific, but for some reason he did not avail himself of the permission granted him.

they were all more or less infected, and not a single plant survived. It was afterwards admitted that instead of collecting seedlings, which was necessarily a work of time and patience, Mr. Markham had been content to take stolons or root shoots, which had but little life in themselves, and speedily rotted from below.

Mr. Pritchett was more successful. To this gentleman, who, though not pretending to great botanical knowledge, was well acquainted with the country, had been assigned the task of collecting the *grey bark* species in the province of Huanuco, in North Peru. Though the flowering season was past, he collected a large quantity of seeds, which he believed to be the varieties described by botanists. The seeds were accordingly received at Ootacamund in January, 1861, three packets labelled as *C. Micrantha*, *C. Nitida*, and *C. Peruviana*, and a fourth, nameless. They were sown and germinated; and the different varieties are still kept distinct at Ootacamund. We observe, however, that neither Dr. Anderson nor Mr. Thwaites preserve any such distinction, and we are informed that the young trees, though five years old, present no distinguishing characteristics as yet.

But the palm of success must undoubtedly be awarded to Mr. Spruce, who, accompanied by Dr. Taylor and a practical gardener named Cross, explored the forests of *C. Succirubra* on the western slopes of Chimborazo. Here having taken up a temporary abode, he not only made his own cuttings, but collected 'at least one hundred thousand seeds,' the whole of which he dispatched from Guayaquil under charge of the gardener Cross on the 2nd January, 1861. In England Cross took charge also of six plants of *C. Calisaya*, which had been brought together by Sir William Hooker, and arrived at Ootacamund with his precious freight on 17th April, 1861. On his return to South America, whither he was attracted 'by the richness and variety of the flora of the Andes,' he was engaged to collect seeds of *C. Officinalis* in the Loja forests, and so energetically did he perform the task entrusted to him, that in December, 1861, he succeeded in dispatching a large quantity of seed of *C. Bonplandiana* and *C. Crispa*, a great proportion of which germinated in this country. In 1863, he was again employed to collect seeds of the Pitayo Bark. This valuable species had been almost exterminated, but Cross was fortunate enough to come across a small clump of young trees, which he was allowed to denude of their seed, before they fell a prey to the all-devouring axe. He gathered the seeds in July and August, 1863, and brought them to the part of Guayaquil; but his promised remuneration not having reached the hands of Her Majesty's

Consul there, he stupidly carried them off again with him into the forests, and when in April of the following year they ultimately arrived in India, they had completely lost their germinating powers.

The apparent want of success which had attended Mr. Markham's efforts to obtain a supply of *C. Calisaya*, had however, in the first instance, naturally discouraged the Indian Government, and induced it at the commencement of 1861 to entertain a proposal for the introduction of this valuable febrifuge from the Island of Java. Accordingly, the Governor General of Netherlands' India was addressed on the subject, and the Dutch Government, with characteristic generosity, placed at our disposal seeds and plants of whatever species it possessed. Dr. Anderson, Superintendent of the Botanical Gardens at Calcutta, was deputed to receive and convey the plants to this country. But before we proceed to notice the results of his mission, it is necessary to give some account of the introduction of cinchona into Java.

Among the scientific men, who for some years had been urging the extension of cinchona cultivation to other countries, not a few were Dutchmen, and it was the Dutch Government which first took active steps for its introduction into the Eastern Hemisphere. In 1852, M. Pahud, then Minister of the Colonies, selected M. Justus Charles Hasskarl, a botanist who had for some time superintended the gardens in Java, for the purpose of collecting seeds and plants in South America. Hasskarl procured 400 plants of *C. Calisaya* from Bolivia, and having collected seeds of what he believed to be *C. Ovata*, he sailed in 1854 direct to Java, in a vessel which had been placed at his disposal. More plants were subsequently sent from Holland, including seeds of *C. Lancifolia*, collected by Dr. Karsten in New Grenada, and the experiment was put on its trial. The cultivation did not thrive, however, under Hasskarl's management, and the original plants were gradually dying, when he was superseded by Dr. Franz Junghuhn, by whom a totally different system was organized. The plants were removed from their exposed position in a shallow soil under a burning sun, to more congenial sites under the shade of the forest; and this experiment succeeded so well that in 1857 some of the plants blossomed, and in the next year bore fruit. Mistakes, however, were still made, the chief being the extensive propagation of the worthless *C. Pahudiana*. Although an eminent chemist, Dr. de Vrij was employed on the spot on a very high salary, hopes were still held out of this species ultimately yielding quinine, and thus large forests of it were planted out to the comparative neglect of other species.

It has, therefore, been the fashion in some quarters, while decrying the labours of Hasskarl in particular, to compare our own more successful results with those attained by the Dutch, and in a spirit of self-glorification, to speak of the cultivation in Java with derision. But it must be remembered that the transplantation of cinchona from their native forests was an entirely novel experiment, and the Dutch had no previous experience to guide them. As remarked by Dr. Falconer in 1852, 'great obscurity and contrariety of opinion among botanists attached to the species, in relation to the numerous varieties of bark known in commerce.' Beyond the few plants of *C. Calisaya*, which had been raised in European hot-beds from seed brought over by Dr. Weddell, Hasskarl had probably never had the opportunity of seeing a cinchona, and he most certainly succeeded in introducing the most valuable bark then known. The system of propagation pursued by the Dutch is now admitted by themselves to have been erroneous, but we might ourselves have pursued the same method, had we not had the advantage of observing and profiting by their mistakes. Nor should it be forgotten with what liberality the Dutch Government supplied us not only with information, but with a stock of plants of all the species they possessed—species, two of which are of unquestionable value, and the third had not at that time been universally condemned. We may hope, however, that a new era in cinchona cultivation has now commenced in Java. In 1861, plants of *C. Succirubra* were presented to the Dutch Government in return for the species we received from Java, though there is a niggardly tone about our Secretary's letter, which will scarcely bear comparison with the liberality evinced by that Government.* And thus after a series of mistakes and disappointments extending over a period of ten years, the cultivation may, at length, be said to have been fairly started. The following statement gives the number of plants in the island according to the latest official returns:—

Species of cinchona.	31*st Dec.*, 1863.	31*st. Dec.*, 1864.
C. Calisaya	19,330 ...	... 36,909
C. Pahudiana	1,347,026 ...	... 1,071,736
Carried over ...	1,366,356 ...	... 1,108,645

* 'Not more in return for the valuable accession actually received to our 'stock of plants of *C. Calisaya*, than in acknowledgment of the very courteous and liberal spirit evinced by the Dutch authorities.' Letter from the Secretary to the Government of India, Home Department, to the Secretary to the Government of Fort St. George, dated 9th December, 1861, quoted from Markham.

Brought forward ...	1,366,356	...	...	1,108,645
C. Succirubra ...	124	...	...	401
C. Lancifolia ...	481	...	...	689
C. Micrantha* ...	1	...	...	1
Total of all sorts.	1,366,962			1,109,737.

Dr. Anderson started on his mission in September, 1861, and returned in the following December bringing with him 56 plants of *C. Calisaya*, 350 of *C. Pahudiana*, and 6 of *C. Lancifolia*. Six plants of C. Calisaya, and about 60 of C. Pahudiana were retained in the Calcutta Botanic Gardens, as a nucleus for a nursery in Bengal, and the remainder arrived at Ootacamund on the the 20th Dec., 1861. C. Pahudiana is now universally acknowledged to be worthless,† and its propagation has long since ceased to be extended. But the other two species presented by the Dutch Government are among the most valuable, and their introduction was well worth the trouble and expense of Dr. Anderson's expedition. Our propagating stock of *C. Calisaya* was thus increased from six plants to upwards of sixty; a fact of no insignificant importance, when the shyness and consequently the difficulty of propagating this species are taken into consideration. The third species, *C. Lancifolia*, was now introduced into India for the first time. Only one of the six plants survived, and that was for a long time in a weak sickly condition. It ultimately recovered, however, and became the parent stock of all the plants we now possess of this kind.

Such were the circumstances, under which the cultivation of cinchona was commenced in British India. The experiment at the Neilgherries was placed under the management of Mr. W. G. McIvor, a practical gardener who had superintended the Government Gardens at Ootacamund for many years. This gentleman has been eminently successful in the work of propagation; and in the various experiments tested by him, not only have several important discoveries, made by him, been instrumental in swelling the size of the Government plantations at Ootacamund, but the results, as embodied in his monthly reports, have been of the greatest service to the private planter. The accompanying table gives at one view a sketch of the progress made in the cultivation at the Neilgherries, from its introduction up to the present time.

* This single plant had been inadvertently packed in a case of *C. Succirubra*, received from Ootacamund.

† Dr. de Vrij, however, is still jealous of the virtues of *C. Pahudiana*. He now gives it as his opinion, that its bark will in all probability be found quite suitable for decoctions, extracts, &c. &c.

Table showing the rate of propagation in the Government Cinchona Plantations on the Neilgherries up to September, 1865.

	Species.	Number of original Plants, and date of receipt.	30th April 1862.	31 Dec. 1862.	30th April 1863.	30th Sept. 1863.	31st Dec. 1863.	30th April 1864.	30th Sept. 1864.	31st Dec. 1864.	30th April 1865.	30th Sept. 1865.
	C. Succirubra ...	457, Apl. 1861 ...	14,450	45,352	53,854	76,599	86,742	91,046	1,19,135	1,38,119	1,50,686	2,21,280
	C. Calisaya ...	54, Apl. Dec. 1861	237	1,448	1,587	1,725	1,768	1,993	2,481	2,560	2,773	3,138
C. Officinalis	C. Condaminea ...	1, April 1862 ...	1	872	1,051	2,880	6,350	3,448	1,529	2,705	4,323	8,489
C. Officinalis	C. Bonplandiana ...	Seeds, Feb. 1862 ...	8,000	46,751	77,322	1,26,863	1,55,780	2,27,195	2,91,485	3,24,276	3,67,718	5,09,021
C. Officinalis	C. Crispa... ...	Ditto	105	664	1,003	1,280	1,569	1,728	2,230	2,367	2,729	3,139
	C. Lancifolia ...	4, Dec. 1861 ...	1	1	1	6	6	8	20	28	52	93
C. Micrantha.	C. Nitida... ...	Seeds, Feb. 1861 ...	2,922	8,591	8,345	8,394	8,406	8,425	8,483	8,500	8,500	8,500
C. Micrantha.	C. Species Ignota ...	Do. do. ...	1,211	2,569	2,638	2,734	2,745	2,769	2,780	2,786	2,786	2,786
C. Micrantha.	C. Micrantha ...	Do. do. ...	3,786	8,304	8,517	9,473	10,139	10,913	13,787	14,314	14,724	14,893
C. Micrantha.	C. Peruviana ...	Do. do. ...	357	2,729	2,961	3,097	3,153	3,175	3,336	3,372	3,389	3,389
	C. Pahudiana ...	250, Dec. 1861 ...	425	425	425	425	425	425	425	425	425	425
	Total ...	.....	31,495	1,17,706	1,57,704	2,33,476	2,77,083	3,51,125	4,15.291	4,99,452	5,58,105	7,75,153
	Increase by propagation during the month ...	.....	.....	.....	12,565	15,874	18,657	28,988	21,600	24,006	27,358	78,725
	Average monthly increase during six months. ...	.....	.....	.....	12,000	14,208	16,044	19,251	22,776	21,982	19,660	40,910

On the 30th Sept. 1865, 244,871 plants had been permanently planted out, the more advanced of which had attained a height of 10½ feet. One of the plants cut down in March 1863 had made strong shoots, 6 feet in height. The total number of plants distributed to the public was 81,491, their destination being of wide extent from Algiers and Jamaica to New Zealand. The cultivation would seem to have established itself firmly in the Madras Presidency, and the planters have been only too ready to avail themselves of the opportunity afforded, of commencing so promising and lucrative a trade. We have just heard it stated, that Mr. McIvor himself has resigned the superintendence of the Government plantations, in order to undertake the cultivation on his private account; and if the report is true, it is a fact of no small significance, as showing the confidence in its ultimate success possessed by the man who has had the largest practical experience of the cultivation in India.

We may notice in this place, the result of the attempt to introduce the cinchona into other Colonies of Great Britain. In accordance with his instructions, Mr. Spruce forwarded a packet of seeds of *C. Succirubra* to Jamaica, and Mr. Pritchett sent seeds of the grey bark species to both that island and Trinidad. At the latter place the seeds never germinated; in Jamaica they came up plentifully, but the plants languished in the heat of the plains, and they had to be removed to higher ground near Catherine's Peak. Here they were left without even a gardener to tend them, and thus, in consequence of the utter want of all superintendence, the cultivation has proved a lamentable failure. It is to be hoped that at no distant day the Governors of our West India possessions will recognize the propriety and importance of fostering so profitable a branch of commerce.

It was in 1861, that the extension of the cultivation of cinchona to the Eastern Himalaya was sanctioned by Lord Canning. With this view Dr. Anderson on his return from Java was authorized to leave six plants of *C. Calisaya*, and fifty-nine of *C. Pahudiana* in the Botanic Gardens at Calcutta, as the nucleus of the new nursery to be formed at Darjeeling. To these were added 193 plants brought back from Ootacamund, and 31 seedlings raised in the Gardens; and thus on the 24th March, 1862, 249 plants and 548 seedlings of *C. Pahudiana*, which had been raised in Calcutta from the Java seed, were dispatched from the Botanic Gardens under charge of a European gardener. Of these plants, 211 only arrived at Sinchul during May: the whole of the *C. Pahudiana* seedlings being injured by an accident which happened to the case containing them. Pending the construction of a road through primeval forest to the site selected by Dr. Anderson,

an empty barrack was turned into a temporary conservatory, and the plants remained throughout a rigorous winter at an exposed elevation of 8,400 feet above the level of the sea, where all propagation was naturally arrested. The dilatory proceedings of the Public Works Department precluded the possibility of the new site being made accessible before the approach of another winter, and the nursery was, therefore, removed in April of the following year to Darjeeling, where a private garden in the vicinity, situated at an elevation of 6,000 feet, was rented for the purpose. In October 1864, the road being sufficiently advanced, the operation of transporting frames, &c., to Rungbee, a distance of fifteen miles, was commenced; and by April of the following year, all the plants had been removed from Lebong, and the work of cultivation was fairly started. The following table of the numbers of the different species of Cinchona in the Government nursery at Darjeeling, will show how seriously these removals interfered with the progress of propagation, and what satisfactory results may now be anticipated, when the plantations have been permanently fixed.

Species.	June 1862.	1st April 1863.	1st April 1864.	31st Dec. 1864.	1st April 1865.	31st Dec. 1865.
C. Succirubra ...	74	420	3,053	3,120	7,030	47,534
C. Calisaya ...	5	51	172	23	37	142
C. Officinalis ...	...	125	2,930	11,529	23,929	63,330
C. Micrantha ...	79	323	1,144	584	1,294	4,754
C. Pahudiana ...	53	1,892	2,275	5,094	5,094	5,192
Total of all species	211	2,811†	9,574	20,340	37,382	120,852

Besides the above, 1,000 plants have already been sold to the public, and 2,000 are kept at Rungearoong as a propagating stock to supply the heavy demand for plants by private parties. The number of plants permanently planted out at Rungbee, is 3136, and several of these, which we measured last October, just a year after being planted out, had attained a height of nearly five feet. It is intended to raise the propagating stock of each

† Of these, 327 were received from Ootacamund, and 11 from Ceylon.

species to the number of 10,000—a limit already attained with the species of *C. Succirubra*, and *C. Officinalis*,—and afterwards to devote the produce to the formation of bark-yielding plantations in the open air. These plantations are being formed at different elevations, with a view to test the conditions favourable to the growth of the various species. A sufficient number of cuttings to plant out twenty acres at six feet apart had already been set aside at the close of last year, and this number will have been greatly increased before the arrival of the proper season for planting.

Besides the Government plantation, the cultivation of cinchona has been introduced by several of the Tea planters at Darjeeling, and though as yet only in its infancy, there can be no doubt that quinine yielding bark will in a few years become one of the chief products of the district. The most satisfactory results probably have been attained by the Cinchona Association, which has been enabled to propagate with such success as to increase its stock of plants ten-fold in the past year.

It remains to notice the result of the experiment in other parts of India. In the North-Western Provinces Dr. Jameson introduced some plants into Gurhwal in 1862, but they appear to have been neglected, and have all perished. A fresh supply, however, is to be despatched from Darjeeling, and it is to be hoped the cultivation will be carried on under better auspices. Greater success has attended the experiment in the Punjab. After considerable failure and disappointment, Captain Lees has at length placed his plantation at New Quito in the Kangra valley on a firm basis. The number of plants at the end of March last was 4,279; the rate of propagation being about 2,000 per cent. per annum. A few plants had been planted out in the open air, one of which had attained a height of three feet in nine months. Plants have, moreover, we observe, been distributed in Assam and Burmah, but we have not been able to glean any particulars regarding their propagation. We should not be sanguine, however, as to the result, unless they were treated with greater care than one batch we heard of, which were seen at Wilson's Hotel denuded of leaves, and packed in an open basket. Eligible sites for plantations will, no doubt, be found both in the Khasia Hills and at Chittagong, where it is the intention of Government, we believe, to establish an experimental nursery. The plants are being forwarded from Darjeeling,* but the success of the

* We have just seen a batch of these plants *en route*. They were sent from Darjeeling in a small box by Dâk Banghy, the roots being packed in dry moss, and the leaves wrapped in paper. They have thus reached Calcutta in as healthy a condition as could be desired.

experiment cannot be ensured, so long as the cultivation is entrusted to amateurs or officials, without the aid of a practical gardener.

The situation and physical characteristics of the island of Ceylon, pointed it out from the very first as one of the most promising districts for the introduction and cultivation of cinchona. In 1861, one large plant of *C. Calisaya*, three feet in height, and one smaller cutting were safely transported from the Kew Gardens, under charge of Dr. Anderson. In the course of the same year, a portion of the seeds collected by Messrs. Spruce, Pritchett, and Cross in South America, were also forwarded to Ceylon, and about a hundred plants of *C. Succirubra* were subsequently received from Kew. The above, with the addition of twelve plants of *C. Calisaya*, liberally presented by the Dutch Government in 1863, formed the nucleus of the Ceylon stock, which has since been so successfully propagated by the gardener Mr. McNicol, under the superintendence of Mr. Thwaites. That gentleman speaks most confidently in his last Report of the future prospects of the cultivation in that island, and the statistics fully bear out the most sanguine expectations. He writes, 'Many thousands of plants have been distributed 'from the Hakgalle garden, and I have received from the various 'parts of the island, where they have been planted, most favour-'able reports of their perfect health and vigorous growth, and 'not a single report of an opposite character has yet reached me, 'so that there appears to be every prospect of quinine becoming, 'before very long, one of the most important products of the 'island.' The rate of increase may, to some extent, be deduced, from the following statement of the number of plants remaining in the Hakgalle garden, at the close of each year under report.

31st August 1861.	1862.	1863.	1864.	1865.
840.	2,845.	22,050.	1,89,521.	3,54,026.

These numbers are, of course, exclusive of the plants distributed to the public, and include those permanently planted out in the Government plantations. The actual number of plants, distributed up to the 31st August 1865, was 129, 350, or more than half as many again as have been distributed from Ootacamund; while application had been made for as many as 439,274 plants.

The condition of the plants remaining in the garden on that date, will be seen from the following statement:—

Names of Species.	Permanently planted out.	Stock Plants.	For Distribution.	Cuttings.	Total.
C. Succirubra	1,345	2,380	63,158	78,290	1,45,173
C. Officinalis	1,044	1,934	1,09,845	93,880	2,06,703
C. Crespella...	430	.....	.....	.....	430
C. Micrantha...	600	.....	.....	612	1,212
C. Calisaya.	100	.....	.....	261	361
C. Pahudiana...	25	.....	.....	122	147
Total of plants of all spc.	.....	... ..	.....	.....	3,54,026

The tallest plant of *C. Succirubra* was raised fron seed received from South America in the middle of 1861, and had attained a height of 4 feet in the first year. In the second year, the tree was 10 feet high, and the stem 7 inches in circumference; in the third year, it was nearly 14 feet high, and 9 inches in circumference, while at the end of the fourth year, it had attained a growth of 17 feet, the trunk measuring nearly 13 inches round at the base. Although plants as well as seeds of this species were received at Ootacamund, the highest plant there did not exceed 10 feet at the same date. We understand, moreover, that *C. Officinalis* has lately borne fruit in Ceylon, and that some of the seeds which were forwarded to Darjeeling, are in process of germination.

We have thus sketched the introduction of cinchona into India, and its cultivation up to the present. But we should be doing scarce justice to Mr. Markham, were we to leave our readers under the impression that, in consequence of the unfortunate loss of all the plants collected by him, he has forfeited all claim to the credit of having been instrumental in the work. That gentleman's own exaggerated account of his services and exertions has undoubtedly had the effect of creating an undue depreciation of his merits. So far as his personal services in the work of collection were concerned, India has derived no benefit whatever from his expensive but unsuccessful mission

to South America. We possess, indeed, the *C. Calisaya*, which it was Mr. Markham's especial province to collect; but it is to Dr. Weddell, who collected seeds in 1848, that the Eastern Hemisphere is indebted for this species. But we should be wrong in saying that India has not benefited indirectly from Mr. Markham's exertions. From the day on which he tendered his services to the Secretary of State, he has taken so large an interest in the experiment, as has been sufficient to bring it to a practical issue and ensure success. His official position has enabled him to place the subject before Government in a clear light, and to urge the adoption of measures without which that success would have been impossible. We may well believe that a considerable degree of the interest manifested by Sir Charles Wood in this enterprise, is entirely due to the promptings of his official subordinate: and it may perhaps be doubted whether, had Mr. Markham never placed his services at the disposal of Government for this purpose, the whole subject of the introduction of cinchona into India might not still be looming in the future, instead of being, as it is, a fact actually accomplished.

It is time now to turn to the future prospects of cinchona cultivation. The great question which has to be solved is this:—will the cultivation of cinchona yield an adequate return for the labour and capital expended upon it, and be in every way a profitable investment; or, in other words, will it pay? The solution of this question is affected by conditions so multifarious, that we despair of carrying conviction to the minds of all. Differences of climate and temperature, the available supply of land and labour, must naturally influence each individual scheme in different degrees, and the necessarily imperfect estimates we have to offer, may possibly be deemed unsatisfactory. But we shall endeavour to make the most of the facts and statistics at our disposal, and leave every one at liberty to form his own opinion of the results.

Our readers are doubtless aware that the large supplies of Peruvian bark, hitherto imported into Europe, are the product of indigenous virgin forests in South America. It is the threatened failure of these sources of supply that has induced other nations, and more especially the English, to attempt the cultivation of the cinchona for medicinal and commercial purposes. The cultivation of any plant, with which we are acquainted only in its natural wild state, is an experiment requiring constant care and patience; but the difficulties are enormously increased in the case of cinchona, owing to the very imperfect knowledge we have of the plant, and the diversity of conclusions that are drawn from the few facts that are known. Hitherto the trees have been

found growing in the midst of dense primeval forests; there, for the last two centuries, the process of gathering the bark has been carried on by the hardy *cascarillero;* but until quite lately the conditions of their growth were never investigated, and are even now but very imperfectly understood. The bark, moreover, being the spontaneous gift of nature, human labour was only so far required as to collect and transport it to the coast. And yet, notwithstanding the indigenous supply and the small cost of production, the drug has always commanded a monopoly price. It remains to be ascertained therefore, not only whether the attempt to cultivate cinchona will prove successful, but whether the cultivated bark can compete with the natural supply.

Now in no respect is the evidence of the gradual exhaustion of the South American forests more apparent than in the inferiority of the bark now-a-days exported, compared with that which was received formerly. This inferiority is not only observable in the degree of purity in which the bark arrives in Europe, but in its very form. When a cinchona tree has been discovered and felled in the forest, the collectors usually prepare the bark upon the spot. The solid trunk bark, called *tabla* or *plancha* by the natives, is dried in flat oblong slabs, while the thinner bark from the branches curls up like cinnamon on exposure to the sun, and thus forms the *canuto* or quill bark. In this state it is conveyed to the coast, where it is sewn up in coarse canvas and enveloped in a case of fresh hide, forming the packages called *serons*. The market value of the two forms of bark however differ considerably, the former being much richer in alkaloids; but to such an extent have the forests been denuded of the more valuable species of cinchona, such as C. Officinalis and C. Pitayensis, that the quills are the only form in which the bark is now imported: the large forest trees have been utterly extirpated, and all the bark that is now gathered is the product of suckers and saplings only.

In considering the question of the introduction of cinchona cultivation into India, this fact of the superiority of the trunk bark or *tabla* could not escape observation, and it was, therefore, very naturally supposed that all our exertions in this enterprise must aim at procuring the bark in this form. At the same time another important consideration was not overlooked, that, if it were necessary to wait thirty or forty years for the maturity of the trees, although a wealthy Government might afford to forego its profits during the interval, yet it could hardly be expected that the cultivation would be fostered by private enterprise, and, least of all, in India, where fortunes are accumulated in

commerce with such rapidity. And though for some time hopes were held out, that the young trees might be fit to cut at the age of twelve or twenty years, still it was felt that even this period was too long; and we believe it is now universally admitted, that to succeed commercially, private cultivation must be limited to procuring a supply of quill bark. It is to the cultivation of the bark in this form therefore, that the substance of our remarks will be restricted.

It is not our intention to say many words on the practical management of a cinchona plantation. The conditions most favourable to the growth of the plants and the elaboration of the alkaloids in the bark, have formed the subject of much controversy, and are not yet finally determined. The success which has accompanied the experimental cultivation at Darjeeling and in the Kangra valley, proves that it was a mistake to suppose that the cinchona is necessarily confined within the tropics. A cool and equable temperature however, where possible, is to be preferred, though much may be effected by a judicious selection of elevation in different latitudes. The *vexata quæstio* of growing the plants under the shade of forest trees, as in Java, has been determined by an acknowledgment, that the sooner the plants can do without shade, the more natural and healthy will be their growth. But it has been at the some time proved, that shade is indispensable while the plants are young and tender, and one of the chief difficulties will be to ascertain the most effectual plan of shading them during the first year after being planted out. The most satisfactory mode of propagation hitherto pursued, has been by means of cuttings. Propagation by layers and buds has also been attended with considerable success, but it is naturally a much slower process, and the plants never seem to attain the same degree of healthy vigour as those raised from cuttings. By this latter method a rate of increase has been attained as high as 2,000 per cent. per annum. The cuttings should be made from 1½ to 2 inches in length, and planted in pots or boxes of pure sand, the slightest moisture in the soil causing them to rot off. Hereafter, no doubt, the plants will be more extensively propagated by seedlings; but as yet few trees have even flowered, and, owing to the peculiar dimorphic character of the cinchona, by which a large congregation of plants is necessary for the fertilization of the ovules, still fewer have borne fruit. It will probably be found advantageous to plant a few acres as a permanent reserve for purposes of seed. To say nothing of the demand which may confidently be anticipated for many years to come, the trees can at any time be cut down for the bark, when no longer required for seed.

The plants after being 'hardened off,' will be planted out in the permanent plantations at six, eight, or ten feet apart. They will be grown in a shrubby form as coppice, and either by the annual pruning of the branches, or by being periodically cut down, will yield quill-bark in the same way as cinnamon trees. The latter method is probably that which will find acceptance with planters, a succession of crops being provided by plantations of different ages. The tree when cut down to within six inches of the ground sends forth new shoots which, owing to the more advanced maturity of the root, grow more rapidly than the original stem. A plant cut down at Ootacamund threw up shoots, which attained a height of six feet in eighteen months. If two only of such shoots were allowed to grow, it is obvious that the yield of bark would double itself at each successive harvest. Experience alone can decide at what age it will be found most profitable (all things considered) to cut down the plants. Two points must be taken into consideration, as we have two indeterminate quantites to deal with. In the first place the object will be to obtain the maximum yield of bark and a complete formation of alkaloids therein, while, on the other hand, it is of importance that the cultivation should yield a return at as early a date as possible. We cannot do better than quote the opinion of Mr. J. E. Howard on these points. In 1863 that gentleman wrote as follows: 'the exact period at which it would be 'advisable to cut the bark must be ascertained by experiment, 'but I think this should take place as soon as the bark attains 'a thickness which would re-pay the cultivation. There would 'be a positive disadvantage in allowing the bark to attain such 'an age as is indicated by many of the specimens from South 'America, if the object to be attained is the extraction of the 'alkaloids, since there is a continual process of deterioration of 'these after a certain period in the history of the bark, which 'is connected with the oxidation of the red colouring matter, 'and the production in very old trees of those fine descriptions 'of bright red bark, which command, indeed, a high price in the 'market (as much as the present time as eight shillings per lb.), 'but which would not, in many cases, be more valuable for the 'production of quinine than bark of one year's growth.' Yet Mr. Howard is equally convinced that the trees should not be cut too young. In June of the following year, when remarking on the chemical analysis of a specimen of bark of *C. Succirubra*, sixteen months old, from which he had extracted 2·97 per cent. of alkaloids, he writes:—'The consideration of this specimen forcibly suggests the desirability of giving the bark as long a time 'as possible to mature, since the additional thirteen months of

'No. 1 specimen, (which had yielded 6 per cent. of alkaloid) 'have much more than double the commercial value of the bark, 'the proportion of quinine which could be easily obtained crystal-'lized as sulphate being about one-third of No. 1 specimen.' It is obvious, therefore, that no specific age can be fixed as yet for cutting the young trees. It must, as remarked by Mr. Howard, be ascertained by experiment, and all we can do at present is to collect and chronicle the results for future reference. Much will naturally depend upon the particular locality, and questions of aspect and attitude will have to be determined in each individual case. We have already seen that the plants in Ceylon have far outshot their contemporaries in the Neilgherries, the latter having taken four years to attain a height, which was reached by the plants at Hakgalle in little more than two. It would seem, however, as though the conditions favorable for the rapid growth of the tree are not altogether identical with those which tend to increase the therapeutic properties of the bark, though the latter are the qualities which determine its value in the market.

But before proceeding further with this part of our subject, it may be convenient to give some brief account of the vegetable alkaloids found in cinchona bark. Previous to the discovery of quinine by the French chemists Pelletier and Caventou in 1820, cinchona bark had been used in pharmacy solely in its crude state. Attempts at analysis had been made from time to time, and with some degree of success. In 1790, Fourcroy found a coloring matter in the bark which has since been called *cinchona red*. In 1803, the existence of *quinic acid* was discovered; and in 1816, Dr. Gomez, a surgeon in the Portuguese army, succeeded in isolating a febrifugal principle, the existence of which had been previously suggested, and which he called *cinchonine*. Subsequently in 1852, two other alkaloids called *quinidine* and *cinchonidine* were discoverd by M. Pasteur, and from that time to the present, important steps in analysis have been made by Mr. Howard and Dr. de Vrij. It will suffice, however, for our present purpose to premise that all these four alkaloids are found in different proportions in the bark of almost every species of cinchona. *C. Calisaya* and *C. Succirubra* are the richest in quinine; the grey barks of Huanuco in cinchonine, and the Pitayo bark in quinidine and cinchonidine. All these alkaloids crystalize as salts, cinchonine alone being insoluble in ether. As a medicine, the bisulphate of quinine is preferred, the therapeutic properties of the rest being not yet definitely determined. Cinchonidine is said to be 'only second to quinine itself in importance as a febrifugal principle,' and it is acknowledged that cinchonine even may be advantageously used in the milder forms of intermittent

fever, and those febrile affections in which stimulant tonics are indicated. Its febrifugal virtues, however, are only one-third those of quinine; while its toxical energy contrasts remarkably with its therapeutic insufficiency. Dr. Daniell, when experimentally employing this alkaloid in lieu of quinine in Western Africa, found that its use induced vertigo and cerebral congestion, and the results of his experience are confirmed by the Council of Health of the French Army. On the other hand, Dr. Macpherson, who had large opportunities of testing its properties in this country, insists that 'its effects are precisely those of quinine without the same degree of efficiency,' and in this view he is supported by Briquet and Howard. It is to be hoped that the question will receive further consideration from our most eminent physicians. It may be that cinchonine has only to fight over again that battle against prejudice and opinion, which has been so often fought successfully before, or the value of the grey barks may really be over-estimated. It is a fact, however, that they are largely sought after for the Russian market, and pending further investigation, we think the cultivation of this species should not be hastily rejected.

With regard to the production of the alkaloids in the plant but little is known at present. We shall endeavour, however, to place our readers in possession of the main facts that have been discovered, bearing on this portion of our subject. The formation of the alkaloids takes place first in the leaves, and is subsequently continued in the bark, but although some cases were successfully treated at Darjeeling by an infusion of the leaves, Mr. Howard is convinced that they can never be made to yield quinine. He succeeded, indeed, in extracting 1·31 per cent. of rough alkaloids, but they existed 'in very intimate relationship with the green coloring matter.' It is well known that climatic influences aid or retard the formation of the alkaloids. They are found most abundant in those trees which are grown at high elevations, and there can be no doubt that by judicious and scientific cultivation, a much larger proportion may be elaborated, than is possible in their primitive wild condition. In June 1863, in an analysis of a small quantity of bark of C. *Succirubra* from Ootacamund, cut in the second year's growth, Mr. Howard succeeded in extracting 4·30 per cent. of rough alkaloids, which on further investigation yielded from 3·30 to 3·40 per cent. of pure alkaloids, of which 2·40 per cent. was quinine and cinchonidine soluble in ether. 'This result,' he writes, 'must be considered extremely favorable.' 'I have noticed,' he continues, 'the product of some fine quills of South American red bark as 3·60 per cent., the larger bark (*tabla*) of the same parcel producing 3·91 per cent. of

'alkaloids. Dr. Riegel obtained from one ounce of red bark, the 'best quality, 4·16 per cent. by Rabourdine's process, or 3·90 by 'that of Buchner. Of this, 2·65 per cent. soluble in ether was 'reckoned as quinine, and the rest was set down as cinchonine. 'I have obtained a much larger per centage from large and pecu-'liarly fine "red bark," but I see no reason to doubt that even 'this higher per centage would be attained in the East Indies, 'if time were allowed for the growth.' And he was right; for in December of the same year, he obtained no less 6 per cent. of rough alkaloid from branches 'eighteen months old and under.' On further purification the yield was 4·10 per cent. of quinidine, cinchonidine and quinine (the two former in larger proportion) and 0·9 insoluble in ether, making a total of 5 per cent. Again in June 1864, the ascertained yield of pure alkaloids from 5 ounces of dry bark, two and a half years old, was 6 per cent. in the following proportions; quinine 3·14, cinchonine 2·16, cinchonidine 0·8. Mr. Howard's anticipations have thus been fully realized.

We proceed to notice the results of Dr. de Vrij's chemical analysis. This gentleman, when visiting Ceylon and the Neilgherries at the close of 1863, procured a quantity of specimens of cinchona bark and leaves, and the result of his experiments was embodied in a paper, which is valuable as containing the testimony of a scientific and competent foreigner to the success of cinchona cultivation in this country. From the bark of a stem, eighteen months old, which had been thickened by moss, Dr. de Vrij obtained no less than 8·4 per cent. of alkaloids of which 2·76 per cent. was quinine, and 5·64 per cent. cinchonine and cinchonidine. But the most remarkable feature of Dr. de Vrij's analysis is the preponderance, in which the alkaloids are demonstrated to exist in the bark of the root. A healthy tree of *C. Succirubra*, 14½ months old, grown from a layer, six feet in height, with a circumference 4¼ inches at the base, yielded from its stem bark 2·65 per cent. only of alkaloids, of which 1·48 was quinine; while the root-bark yielded no less than 7·51 per cent., 3·44 per cent. being quinine. Similarly a plant of *C. Calisaya* yielded only 1·89 per cent. of alkaloids from the bark of the stem, and 3·1 from that of the root. The stem of *C. Pahudiana* gave 45 per cent., and the root of the same plant 1·55. *C. Micrantha* yielded 2·79 from stem bark, and 4·16 from the bark of the roots. And these results are confirmed in the opinion of Dr. de Vrij by a specimen of South American root-bark of *C. Lancifolia*, forwarded to him by Delondre, which contained 8·66 per cent. of alkaloids. It is to be observed, however, that owing to the mode of analysis employed, the per centage of quinine exhibited in the above investigations is

acknowledged to be somewhat excessive, while in some instances Dr. de Vrij was unable to ascertain the exact quantity, though its existence was proved.

These results, however, are entirely opposed to all Mr. Howard's experience, whose investigations on the root-bark of *C. Calisaya* led him to precisely the opposite conclusions. He ascertained that 1,000 parts of the root bark only yielded as much crystallizing salts as 100 parts of ordinary Calisaya bark, indicating that the latter was in such respects ten times more valuable than the former. It is well known that the collectors in Bolivia *adulterate* the genuine Calisaya bark with that of the root, and that such bark, because it is thus adulterated, is not so valuable in commerce. But even supposing it proved that the root bark will yield an equal or greater percentage of alkaloids, we are nevertheless inclined to agree with Mr. Howard that such a proceeding as the cultivation of the plant for the sake of such bark would be very like killing the goose for the sake of the golden egg.

Let us now endeavour to estimate the chances of a return from the cultivation of cinchona. In September 1861, the Government of Madras, basing their remarks upon a minute by Sir W. T. Denison summed up the prospects of the experiment in the following words. 'Thus for an outlay of £3,100, and an annual 'charge of about £1,300, the Government will have a Nursery and 'and two plantations of 160 acres of cinchona. Each acre will con-'tain about 700 trees, and each tree is estimated after (say) ten 'years' growth to produce 5lbs. weight of bark annually, for which 'sixpence per lb. is a low price. Taking, however, 650 trees to the 'acre, and 3,000 lbs. weight only of bark, the annual produce 'would be 480,000 lbs. worth £12,000, as the return on a capital 'of £3,100, and an annual outlay of £1,300.' In the following year, Sir William Denison indited a second minute on the same subject on which he writes,—'I have proposed to plant 150 acres 'annually, because, I am of opinion that the Government will 'have to depend very much on its own exertions to provide 'cinchona bark to an extent at all commensurate with its con-'sumption; it is perfectly true that many persons have asked 'for plants, and professed their intention of making plantations, 'but looking to the fact that they must under any circumstances 'remain without any interest upon their outlay for nine or ten 'years, and that this outlay will amount with interest to about '£100 per acre, I do not think that any great extent of land 'will be planted. Should the lopping and pruning produce the 'quantity of bark anticipated by Mr. McIver, the return will be 'sufficient to repay the capital expended in about ten years, 'exclusive of interest; but the supply will not be large enough

'to produce any great effect on the market price of quinine, 'which will go on increasing until the trees now planted arrive 'at their full growth, say forty years, when the return might 'amount to 40,000 lbs. of bark per acre, or for 180 acres six 'millions of lbs. The cost to the Government will be at the 'utmost, supposing there to be no return in the interval, about '£1000 per acre, and the return, even at present prices, would be 'at least £16,000 per acre.' If this estimate be correct, the Government might shortly be in a position to pay off the National Debt; and, in the prospect of such enormous profit, it is difficult to see how Sir William Denison could have doubted the success of cinchona cultivation by private enterprise. That the fears he expressed rest on no solid basis, is sufficiently demonstrated by the fact that from Ootacamund alone plants have been destributed to upwards of eighty private individuals, while the applications of many others have not as yet been complied with. We are of opinion however that a more favorable estimate even than the above may be taken of the cultivation, in so far that it will yield an earlier return. We have already seen that bark two and half years old will yield as large a proportion of alkaloids, if not larger than American quill bark; and we may therefore assume that so far as the medicinal properties of the bark are concerned, it will be fit for use at three or four years of age. Now the plant from which this bark was taken was not more than six feet in hight, and yielded five ounces of dried bark, while one tree in Ceylon has attained a height of as much as seventeen feet in four years, with a corresponding girth of nearly thirteen inches. We shall assume therefore that the trees may be cut down at the age of four years, and that each tree, on the average, will at that age yield one lb. of dry bark. Suppose then we invest in five hundred acres of waste land, and clear and plant one hundred acres in each of four successive years, reserving one hundred acres for Buildings, Nurseries, and a permanent Seed Plantation. Setting our plants at six feet apart, each acre will hold about 1200, and we shall require about 125,000 plants for planting out each year. We, therefore, commence with a lakh and a half of plants, reserving 25,000 in our Nurseries as a propagating stock, which at the end of the fourth year may be planted out in the permanent Seed Nursery, and allowed to grow without restraint. Our expenditure may thus be estimated as follows:—

Purchase-money of 500 acres of waste, at Rs. 5 an acre	Rs.	2,500
Cost of clearing the same, at Rs. 20 an acre...	,,	10,000
Buildings and Nurseries	,,	10,000
Carried over ...		22,500

	Brought forward Rs.	22,500
Cost of 150,000 plants, at 4 annas each ...	,,	37,500
Salary of a practical Gardener on Rs. 200 per mensem for four years	,,	10,000
Permanent establishment of fifty Coolies at Rs. 6 per mensem for four years ...	,,	14,400
Contingencies, say...	,,	15,600
Total Rupees ...		1,00,000

Thus for an outlay of capital of about a lakh of Rupees or £10,000, we might have 400 acres under cinchona. Now what will be the return? By cutting each crop in rotation at the end of the fourth year, the annual yield will be 1,20,000, lbs. of bark, which at six pence per lb would realize £3,000, or, if we assume that our bark will fetch a shilling a pound all round, which is not an exorbitant price, £6,000. Such, however, will be the annual return for four years only, after which the quantity of bark and therefore the profits will probably be doubled. The return may, however, be calculated in another way. Supposing our bark, like the sample of 1864, yield 3 per cent. of quinine, it will require two pounds of bark to yield 1 ounce of quinine, the price of which, in England, is ten shillings. One-fifth of that price is, therefore, not too high a figure at which to estimate the value of the bark to the cultivator. Deducting the annual expenditure, or Rs. 10,000 at the outside, we shall have a clear profit on our outlay of 50 per cent. per annum for four years, and upwards of 100 per cent. per annum afterwards. Of course these enormous profits will no sooner have been realized, than hundreds of capitalists will be eager to engage in the cultivation; the increased supply will have the effect of reducing the present monopoly prices, and considerable disappointment will be the result. But this must necessarily be the case with every new branch of trade or commerce. It is the early bird that always gets the worm, and his superior energy and activity fully entitle him to it.

It will be observed, that in the foregoing calculation, we have estimated the original cost of our plants at four annas each, the price charged for them at the Government Nursery at Ootacamund; it may be objected that the large quantity required could not readily be obtained there, and could not be raised at that price by actual propagation. But to this we would reply that on the 30th April 1864, the plants actually in the Government nurseries at Ootacamund and distributed therefrom, had cost the Government only six annas each, and this cultivation takes no account of the plants which might have been propagated

from those permanently planted out, or which may have been propagated from those distributed at different times. Moreover, the average cost of each plant is considerably diminished every year as the stock increases, so that there is no doubt that the price of four annas a plant is now very much above the actual cost. But turning to our own estimate, suppose we purchase 25,000 plants only, the quantity we require as a propagating stock, and assume that we can propagate at the rate of 500 per cent. per annum, which is not a very extravagant hypothesis. We shall thus have to pay Rs. 10,000, say, for another year's management, and about Rs. 2,000 more as interest on our outlay, and the required plants will still be raised for less than half the sum which we have entered in our estimate.

It remains for us to notice the political aspect of the subject. We are not going to enter upon a discussion as to the morality of the proceedings adopted by the English and Dutch Governments in employing agents to filch from a jealous country the product of which it has hitherto enjoyed a monopoly. We certainly cannot approve the very questionable though straitlaced conscientiousness of Mr. Markham, who, while condemning the proceedings of M. Hasskarl as unscrupulous, pursued a similar course himself under, perhaps, exaggerated circumstances.

We are led to suspect that Mr. Markham's strict views of morality are only assumed to exaggerate his own account of the difficulties he had to encounter, and as an apology for his want of success. We are of opinion ourselves that the ignorance and apathy of the South American Republics, the utter carelessness about the subject in all the States but one, and in that one the most misguided legislation, afford a strong, if not a convincing argument, in favour of any policy which should have for its object the abolition of a monopoly prejudicial to the health and convenience of the world. And it must be borne in mind that neither the English nor the Dutch have ever intended to benefit themselves exclusively by the success which attended their predatory expeditions, but have always been willing to assist other nations, as for instance the French in Algeria, in the introduction of this valuable medicinal plant. We may wish that our collections in South America had been made with the concurrence, instead of in the face, of the various Governments; but at the same time it was better that they should be made under those circumstances than that they should never have been made at all.

But another question arises, which, from the importance attached to it in certain quarters, cannot be altogether ignored. Has not the time arrived when the Government should withdraw from competing with private enterprise in the cultivation

of cinchona ? It will be admitted on all sides that the Government would no longer be justified in maintaining its plantations, so soon as there is a satisfactory prospect of its own demand being adequately supplied, and this new branch of commerce placed on a sound basis. It will be remembered that one of the chief arguments for the introduction of cinchona cultivation into India was the enormous expense, amounting, it was said, to as much as £50,000 per annum, to which the Indian Government was subjected for a supply of quinine; and not only was this sum paid for the product of a foreign country, but there was good reason to apprehend a total failure of the sources of supply. When the interest which Government has at stake is considered, together with the expense which has already been incurred in introducing the plant, it will scarcely be urged that it should give up the management of its own plantations, until the success of the cultivation has been placed beyond a doubt. It should not be forgotten that so long as the cultivation is on its trial, the Government has peculiar advantages in making experiments and testing the various theories put forth. Not only are its resources more ample, but it is generally in a position to command the highest talent and the greatest scientific knowledge. And the cultivation is as yet an experiment only; not a single ounce of quinine has yet been manufactured from bark exported from this country. The best authorities are not yet agreed on several important principles affecting the growth of the plant and the formation of the alkaloids in the bark. The natural conditions of climate, temperature, and elevation have yet to be determined, and it is impossible that any private planter or planters could collect the necessary statistics for the determination of these important questions, with the same accuracy and completeness as can be done by the governing authorities. And when it is considered that the results of these experiments are the common public property, and may be appropriated by each individual planter, without his being subjected to the necessary expense, we think that those who are *bonâ fide* planters and not mere speculators, will scarcely wish to see the Government recede from the cultivation for many years to come. That the enterprise will eventually succeed—nay, that it has already succeeded beyond the most sanguine expectations, we ourselves have not a doubt. We anticipate with Mr. Thwaites that the export of cinchona bark will ere long become one of the most valuable branches of commerce not only of Ceylon, but of every Presidency in India. And, what is perhaps of more importance, we are confident that the extension of cinchona cultivation must prove to be a measure of incalculable benefit, not only to the natives of this country, but to the world at large.

ART VII.—1. *The Gazette of India.*

THE *Gazette of India* published, about a year ago, one of the most statesmanlike and comprehensive enactments that has ever been promulgated in this much over-governed country. We allude to the minute by His Excellency the Viceroy on Canal Irrigation, in which he rules that all lands are to pay equal rates for the water they consume. The actual rule promulgated in the minute is, that every crop is to be charged at a certain fixed rate, Rs. 2-4 per acre, except sugarcane, which is to pay Rs. 5. We consider charging by the crop instead of by the year a mistake, and we think the charges altogether are high, but these are mere questions of detail which can be easily determined by enquiry and experience; it is the broad principle of the rule we admire, and we think that the same principle might be most felicitously applied to other sections of the administration. We will endeavour in this short article to show how beneficially the principle would work on assessments in general all over the country.

As our ideas, if worth any thing at all, can be interesting only to those who are acquainted with the system of assessment as at present carried out, we will give no detail of that, merely remarking that it is said to be based on facts as they exist, and not on any speculative provisions. The main fact, as will be admitted by every one practically acquainted with agriculture, is that no soil is worth any thing without water, and on this fact we base our theory, and assert, that land should be assessed at an uniform, but almost nominal rate, and moreover that the principle should be carried out in its entirety by making the tax on water an uniform one also. This can only be done by fixing the tax at so low a rate that it shall be no bar to improvement. Adam Smith says, 'the tithe which is but one tenth of 'the produce is found to be a very great hindrance to improvement. 'A tax, therefore, which amounted to one half must have been an 'effectual bar to it.' We will suppose a rate fixed for the whole of the cultivation in the country at Rs. 10-14 per acre, and a tax on water at the rate of Rs. 2-8 per acre throughout the year, no matter how many or what kind of crops the land produces. Our rates may be too high or too low; this is a matter of detail, and we are but illustrating a principle. At the same time, we are of opinion that all lands worth cultivating should be able to pay double these rates as rent or net produce, as defined in Thomason's

directions to Settlement Officers, para. 52, and that all labour expended on lands that yield a ridiculously small rent is merely thrown away. Proprietors who are anxious to keep idle hands on their estates under the pretence of cultivating at 2 annas and 4 annas per beegah, would by this plan have to pay a capitation tax per beegah for all such, at the rate of the difference between the actual rent and the lowest Government demand on cultivation. Moreover, land that is worth only a few annas per beegah is much better left alone; it may improve if left to nature, but can only become poorer by having even the smallest crop drawn from it without getting any return. It often happens that the population of an estate is scanty in proportion to the cultivated land in it. In such a case it would be no loss either to the proprietors or to the revenue, if the cultivation were to be reduced in extent. The yield of 100 acres, well-cultivated, would be equal to that of double the quantity poorly so, and it would be better that labour should be concentrated on the good lands of an estate, than dissipated on the bad lands, for it should always be borne in mind that it is the labour and not the soil that gives the increase. Whilst, however, fixing uniform rates for every beegah of cultivation irrigated and unirrigated throughout the country, we would not be understood to mean that a proprietor, whether of five beegahs or of 5,000 acres, may not let land at as low a rate as he pleases, but simply that on every acre of cultivation in his property he must pay a certain fixed rate to Government. And here we call in the aid of J. S. Mill who writes thus:—

'whenever in any country the proprietor, generally speaking, 'ceases to be the improver, political economy has nothing to say 'in defence of landed property as there established. In no sound 'theory of private property was it ever contemplated that the 'proprietor of land should be merely a sinecurist quartered on 'it;' and again, 'to be allowed any exclusive right at all over a 'portion of the common inheritance, while there are others who 'have no portion, is already a privilege. No quantity of moveable goods, which a person can acquire by his labour, prevents 'others from acquiring the same by the like means, but from the 'very nature of the case whoever owns land, keeps others out of 'the enjoyment of it. The privilege or monopoly is only defensible as a necessary evil: it becomes an injustice when carried 'to any point to which the compensating good does not follow it.'

Government, therefore, has the undoubted right, as it has the undisputed power, even to alienate the estates of those who are proprietors only in name and not in duty. The same principle applies to the proprietors who are refractory or imbecile, for 'the 'principle of property gives them no right to the land, but only a

'right to compensation for whatever portion of their interest in 'the land it may be the policy of the State to deprive them of.'

We think it will be found that the rates we have proposed leave an ample margin for the recognition of claims to hold at favourable or equitable rates, whilst they do not impose a burden upon industry, or bar improvement.

It is an established fact that in almost every village in the country, lands (we do not mean soils) are divided into classes. These classes are generally three in number. The first class comprises lands lying close to habitation, and which are easily reached for the purposes of manuring, cultivating, and watching. These generally fetch the highest rents, and are defined by words meaning '*revenue payees*,' '*manured lands*,' &c. The lands composing the second class are more remote from habitations, fetch lower rents, and are indicated generally by terms meaning, '*middling*' '*fixed rents*,' &c. The third class lands lie more remote still, and are styled '*lesser rents*,' '*outer twigs*,' '*single crops, furthest off*,' &c. It is a prevalent idea that the first class lands invariably fetch the highest rents, the second class less, and the third class least; and such will be found to be the case as long as enquiries are confined to unirrigated land, but the contrary, when once the test of irrigation is applied. For instance, unirrigated lands of the first class in a village, may fetch rents at R. 1-12 per beegah, second class at R. 1-8, and third class at R.1-4, but alongside of these very lands, irrigated lands of the first class will be found bearing rent at Rs.3-12, second class at Rs. 3-8, and third class at Rs. 3-4 per beegah. If the rainy season has been a good one, the unirrigated lands are tolerably cultivated, and bear very good crops; if there has been a failure in the rains, they are left fallow. Lands of the first class lying most convenient get more or less manure, and bear consequently better crops than lands of either of the other classes, but there is not such a difference either in their yield or in their rents as to justify a marked difference in the rates put upon them. In the same manner irrigated lands close to habitations may be more universally manured, more highly cultivated, and better watched, than those at a distance, but almost all irrigated lands are more or less manured, and although the yield of the better manured and more highly cultivated fields will of course be better than that of others not so favoured, the difference in yield and in rents is not such as to justify a sensible difference in the rates they have respectively to bear. We are writing about facts in general and not about particular cases. Many villages have a few fields which are said to bear superior crops, and which bear proportionably higher

rents. Near very large towns likewise some extent of land fetches a rent which is clearly exceptional, but such may be looked on as the upper ten thousand of cultivation, and no scheme of finance based on the taxation of an aristocracy could be successful. The tax that pays best is the one that reaches the greatest number.

Some districts are more favoured than others in the matter of rain, but none are so much so as to do away entirely with the necessity for irrigation, and regarding this it is necessary to lay down certain general rules. For instance, a field watered once, should be charged the same as one watered several times during the year; the cost for the former irrigation would be slight when compared to the expense incurred on the latter, but, by fixing the water rate so low as to leave a fair margin of profit, even when the outside expense had been incurred, the possibility of hindrance to improvement by the imposition of the tax is avoided. Actual facts are the true criterion by which to test the soundness of a theory, and the touchstone applicable here is the amount of high rented lands to be found in a village. No number of houses and no amount of population in a village will produce high rents where there are not means of irrigation; but produce the means of irrigation, and you create houses, population, and high rents, provided the land be not monopolized. Hence, all calculations based only on the number of houses, inhabitants, and cattle in a village, are utterly worthless when looked at through the medium of facts. Difference of soil having, we contend, very little to say to difference of yield when water, labour, and manure are procurable, and a plentiful supply of the first quickly creating the two last in populous districts, it follows that where the land is not monopolized, there is no hardship in fixing an uniform moderate rate on all soils. A far better-founded objection to the plan would be the proximity or remoteness of fields from the habitations of cultivators. But small hamlets are springing up on large estates all over the country, even in places where fields are too remote to be manured, but can get a plentiful supply of water. We would have it remembered, that we have proposed only a water-rate, not a manure-rate, one that, we believe, all irrigated lands can pay without burdening them so as to stop all attempts at irrigation. It would be in our opinion most impolitic to assess all lands according to their yield. A very larger margin, indeed, must be left for both the proprietor and the cultivator to encourage them to do their best by the land. That Government gets a half of even the net produce of the land, when its capabilities are made the most of, we consider as altogether a chimera, and we believe, were it otherwise, no assessment would

stand. Some idea of the kind originated, we think, in the time of Akber Shah, and the delusion has been perpetuated through successive generations of officials to our own time. In some cases, the proprietor, in the shape of seer land, and, in others, most justly, the cultivator, gets the bulk of the produce of estates or holdings.

We consider it a mistake to assess culturable lands at all. The discrepancy between the revenue survey and assessment survey areas of culturable waste, is a striking proof of the difference of opinion existing as to what lands are capable of cultivation and what are decidedly barren. Ruins and sites of old cities are invariably entered in all returns as barren, and yet we have seen the finest growth of tobacco and other valuable crops on such sites. Oosur lands are also always returned as barren, and yet if they can be kept under water for two years, they will bear a good crop of rice in the third. These are extreme cases, but our remarks are applicable to many others.

Nor do we think it sound policy to assess an estate according to its capabilities of improvement. We consider this a speculative provision totally at variance with common sense. If the demand for the produce improves, or if from any other cause the condition of the people is bettered, the desire of accumulation follows as a natural consequence the facility for gratifying it. It is certain, however, that the yield of land cannot be increased without irrigation, and every acre brought within its reach increases the Government revenue. As to improvement in the mode of cultivation, that must always be due to industry and knowledge, which, in this age of enlightenment, are considerd to be beyond the pale of taxation.

If our principle be admitted to be good, the details would not be difficult. The proprietors of an estate should be bound to submit a statement of the cultivated and irrigated area within it. The correctness of this statement could easily be tested, and false statements should be treated as attempts at defrauding the Government of its revenue. Although the same fields may not be cultivated or irrigated every year, still the average amount of cultivation and irrigation in a village remains the same, and this average amount should be the amount taxed, and the proprietor should give notice of increase and decrease of either or both. It is easy enough to ascertain how many beegahs of land are under cultivation, or have been irrigated during the year, but it is next to impossible to say what the yield of a field may be even approximately; nay, it is notorious that the same field seldom yields an equal crop for two consecutive years, even in the same lands.

To determine the difference in the quality of soils is the most difficult, as it is to a conscientious man the most harassing, duty, imposed on the assessing officer. Almost all classes combine in deceiving or in attempting to deceive him. Some, even agriculturists, through ignorance, but the majority, because they believe it to be their interest to do so. It is a well-known fact, and it is not a surprising one, that many officers engaged upon assessment duty, have never had an opportunity of studying agriculture either practically or theoretically, and although a well-educated man may have a very good idea of the general constitution of soils, the more he has read on the subject, the more convinced he must be how difficult the practical application of that knowledge is. With the number of works which have been published on agricultural chemistry, it is not much for any one to be able to say of what a soil is composed, but these very works teach us that although 'the general composition of a soil 'and its connection with one or other of the different classes of 'soils may, in some measure, be judged by examining it in 'the ordinary manner,—by its colour, texture, the characters of 'the stones it may contain, the quantity of organic matter, '&c.,—to be able to speak positively on this subject, it is 'necessary to ascertain the precise composition of the soil, and this 'can only be done by a chemical analysis. But a chemical 'analysis is of very little use unless it is complete, and the more 'valuable parts of the soil are accurately determined; and this 'operation requires much care even in the hands of an experienced 'chemist.'* Agricultural Chemistry teaches us, that, 'with a 'great amount of labour and expense, clay soils become exceedingly 'fertile, and return a good profit to the cultivators, since they 'require less in the shape of manure than most other kinds of soil;' that 'sandy soils are light, porous, deficient in retaining moisture, soon suffer from drought, and by heavy rains are deprived 'of the little valuable matter they may originally contain; that 'lime soils are a most extensive class,' and that 'soils of every 'degree of fertility are included in this division. The greater 'number of lime soils are poor, thin soils; some of them, however, 'are exceedingly good soils, and remarkable for their fertility.' Under such circumstances, who can recommend that classification of soils should be one of the bases of the assessment system? Such classification is of the utmost benefit to the interests of the proprieter and the cultivator; but it constitutes minutiæ into which Government, in our opinion, have no necessity to enter. Moreover, till we introduced the system of minute classification, the natives

* Agricultural Chemistry, by Alfred Sibson.

themselves had no idea of the meanings of terms now in common use in many districts. They had words expressive of clay and sand and lime *(kunkur)* and of organic matter, and no wonder they should, as these are the four principal constituents of nearly all soils. They had also a term or terms for barren lands, and for a peculiar soil found in boggy, undrained lands, which, we believe, to be the noxious sulphate of iron, which, agricultural chemists assert, exerts such an injurious effect on vegetation. Whatever it may be, all kinds of rice flourish in land strongly impregnate with it, and it is used by potters in conjunction with '*Ray*,' which we have heard called muriate of soda, for the purpose of colouring the earthen vessels in common use all over the country. Many assessment officers must remember how often they have been harassed by the obstinate assertions of interested parties, that the soils of contiguous fields, of which the rents varied considerably, were different in their constitution, whereas the difference in rent was attributable to the castes of the holders, and not to the quality of the land; and how often they have been astonished at the reiterated assurances of villagers who were old enough to know, and who had passed their lives in cultivating such very fields, that they could not point out the difference between land in which transplanted rice can be raised, and that in which rice must be sown broadcast. No more satisfactory answer could be got from them, than that in the one transplanted rice can be raised, and in the other it cannot, and that this knowledge is traditional. And yet in such lands, the practised eye readily detects a difference, and the firmer soil of the two fetches a much higher rent than the other, and is entered in the assessment returns as irrigated, whilst the other appears as unirrigated land, but neither of them is so poor as not to be able to pay the low uniform rate we have proposed for all lands, and the richest is utterly useless unless irrigated. Hence, it is apparent that the result of all the assessing officer's labour, anxiety, and knowledge gained, is the conviction that assessing by classification of soils is a mistake, for that in very many cases, the lands said to bear inferior crops, are no way different in composition to the good-bearing lands, but that their situation with regard to facilities for manuring and irrigation is against them.

The main question is, would the water rate we have proposed deter individuals from improving the means of irrigation throughout the country? We believe not, because if an uniform rate were once established, the capitalist would merely calculate whether it would re-pay him to invest his money in such an undertaking, and the poor, ignorant, religious, or fanatical are

guided by far different motives in the disposal of their superfluous means, than any communicated to them through the channels of official routine.

It is a favourite theory that little measures of relief and attention to infinitesimal minutiæ, often afford or produce great results, and our attention is drawn to the fabric of the British constitution, which has been patched so, that the colour of the original grounding is scarcely discernible, or to the wonderful tenant-properties in Switzerland, which are so subdivided, that it is difficult to understand how they support the numbers dependant upon each. To these arguments we reply, with a lecturer on the 'Science of History' at the Royal Institution about two years ago, that 'the conditions of human problems never repeat themselves,' neither does history repeat itself in modes of thought, nor are the antecedents of the countries named apposite to the question we are considering; and above all, those countries are peopled by races of freemen who have always been free, and who have for a very long period of time legislated for themselves through representatives elected by themselves. We are willing to grant that great results often follow the system of what we will term piecemeal legislation, but we deny that they are caused by it: it can be, at best, but an accessory. For instance, if Government were, in any district, to give notice that land irrigated from wells newly made were not to be subjected to increased rates during the currency of the existing settlement, and a number of wells were to be constructed during the next five years, far exceeding the number made in any other five years previous to the notice, it would get credit for a result due, most probably, to the generally increased prosperity of the country, or to some principle founded on a broader basis than such an order could be. For, if we examine the probable practical effect of such an order we find that it would be most unfair in the working. Were such an order issued at the commencement of a settlement, of, say, thirty years, Government would be a great loser, the holders of fields watered from wells so favoured would be great gainers, whilst the whole of the wells might have become useless by the end of the term of settlement, and the lands irrigated from them for so long would remain assessed as unirrigated lands. Were such a notice issued within a few years of the close of settlement, it would not be sufficient inducement to counterbalance the prospect of gain held out by waiting till the commencement of a new term. And, under any circumstances, would not those cultivators have reason to grumble, whose lands are irrigated from wells, dug from year to year, or from pools of water whose beds have to be periodically

excavated? We hold to the principle that where money is, it must and will circulate, and that no amount of official inducement will produce what it requires capital to create.

The tendency of the theory above indicated would be to suggest that no private efforts at irrigation should be taxed for a certain number of years after their application, and to repudiate entirely the idea of an uniform rate upon land, on the ground that it must bear unfairly either on the cultivator of very poor lands, or on the Government revenue, if reduced so low as to meet the capabilities of such lands. We have already shown how unfair such a rule with reference to irrigation would be, and we will now examine the question of very poor lands. No one can for a moment suppose that land, which will not *bonâ fide* fetch more than three annas or six annas per acre, is capable of supporting an infant, much less even an emaciated calf. Then why have we such an extent of land in the country held at these ridiculous rents? For many reasons. The cultivator, who holds some of the best lands in a village at an exorbitant rent, but still finds them so profitable that he will not give them up; or in consequence of associations connected with them, or for a hundred other reasons, manages to get a few acres of far outlying land at a mere nominal rent, and the proprietor who has no other applicant for them, is only too glad to let him have them, as they retain to him a valuable contributor to his support. Or, it may be, the cultivator, a thriving man, has got a little capital and is bitten by a desire to speculate. Or the lazy dependant and hard-working labourer have both of them claims on the proprietor of an estate, which are most easily and economically satisfied by the grant of a few acres on the confines of it at a mere nominal rent. Or again, the claims of religion or the claims of superstition have made good their footing on a demesne, and are recompensed with the wages of labour even as the drone for the worker. We would not deprive the proprietor of the privilege and the pleasure of distributing his property as he chooses. A proprietary community might equalize their burdens and distribute their profits among themselves to the uttermost farthing, but they should not expect, nor did they before our time require, the Goverment to do it for them. With reference to this point, though we are not prepared to say that communism in a limited sense is not a very good system for those who like it, we think it would be an absurdity on the part of a of a Government to press a principle for which we have no kind of precedent, even in nature, for as the natives say, the fingers of our hands even are not of equal length. We are well aware that this is not according to the 'true idea of distributive justice,

which consists, not in imitating, but in redressing, the inequalities and wrongs of nature, but for such a consummation, we must wait till the stronger and more powerful sections of mankind are willing to make sacrifices, which will reduce them to a level with their weaker or less fortunate fellows. But whilst allowing proprietors full scope for the exercise of all the higher attributes of human nature, we would not expose them to the temptation of so doing at the expense of their honesty, by putting it into their power to sustain friends and relatives, or the poor and needy, who have a right to look to them for support, on lands which would otherwise be paying revenue to Government, for we still contend that it would not be worth the while of the most abject to cultivate lands, which would not *bonâ fide* yield a rent equal to that charged by the Government rate for unirrigated land. The proprietor of a large estate can afford to let much land at this rate, making up for the deficiency here by the surplus elsewhere. But the proprietor of but a few beegahs has to pay no rent, but only this rate to Government, and he need not, unless he wishes it, allow any one to intercept the produce. It is no disgrace to a poor Brahmun or Rajpoot to dig a well or to manure a field. The only thing connected with cultivation, they are prevented by their castes from doing, is holding the plough.

There are three questions which very naturally suggest themselves on the introduction of a proposal like ours to public notice. What is the necessity for it? Would the revenue suffer? Would the people like it? Some of the reasons for the necessity we have already detailed; others are the enormous expense which has already been incurred, and which is still being incurred, by the present system of assessment, and the necessity for which would be entirely done away by our proposal; the peculiarly heavy incidence of the present land tax on the most industrious classes, and the want of any kind of standard, by which our resources with regard to land revenue may be computed.

From the returns of several districts in our provinces, which have from time to time been published, we are led to think that the revenue from land would be much increased by the adoption of the rates we have proposed, and we believe that all classes would most cheerfully acquiesce in the proposal, were it only with the view of securing exemption from the inquisitorial examination into their means, to say nothing of the trouble, vexation, and oppression, to which they are exposed by the present system of collecting statistics for assessment. The fixed assessment upon land should not be regarded as a tax, but as a rent charge in favour of the public; and the tax upon water cannot be considered a tax upon industry or improvement, but upon

capital;—which is not objectionable, so long as the payer can estimate what portion of it he will be allowed to keep.

We have purposely refrained from any but the slightest allusion to rights in land throughout this article, for though we are well aware that consideration of such rights is one of the first duties of an Assessment Officer, it is our opinion that such should not be the case.

Together with the Government demand, a certain sum amounting to about one per cent. is collected for local purposes, such as repairs of district roads, education, &c. This we consider a mistake. Such collections should be made, and their expenditure regulated by the people themselves, under the control of district officers. We do not think we make half enough use of the people for the management of what are really and truly their own affairs. We go further than this. We think that in both civil and revenue cases, disputes between natives should, in all possible cases, be decided by punchayut or arbitration, and in this opinion we are supported by the authority of some of the best judicial officers that the Indian Civil Service has ever produced.

ART. VIII. 1.—*Mémoire pour le Sieur de la Bourdonnais, avec les pièces justificatives.* Paris, 1750.

2. *Supplement au mémoire du Sieur de la Bourdonnais.* Paris, 1751.

3. *Pièces justificatives supprimées par le Sieur de la Bourdonnais.* Paris, 1751.

4. *Lettre à M. de * * * sur le mémoire du Sieur de la Bourdonnais.* Paris, 1751.

5. *Mémoire pour le Sieur de la Gatinais, Capitaine du Vaisseau dans les Indes.* Paris, 1751.

6. *Mémoire à consulter pour la famille du Sieur Dupleix.* Paris, 1751.

7. *Second Mémoire à consulter pour la famille du Sieur Dupleix.* Paris, 1751.

8. *Observations sur les deux Mémoires à consulter distribués par la famille du Sieur Dupleix.* Paris, 1751.

9. *Mémoire pour le Sieur Dupleix contre la compagnie des Indes, avec les pièces justificatives.* Paris, 1759.

10. *A Voyage to the East Indies, &c.*, by Mr. Grose, 2 Vols. London, 1772.

11. *A History of the Military Transactions of the British Nation in Indostan from the year* 1745, by Robert Orme, Esq., F. A. S., 1803.

12. *Histoire de la conquête de l'Inde par l'Angleterre, par le Baron Barchou de Penhoen.* Paris, 1844.

13. *Inde,* par M. Dubois de Jancigny, Aide-de-Camp du Roi d'Oude, et par M. Xavier Raymond, Attaché à l'Ambassade de Chine. Paris, Firmin Didot Frères, 1845.

14. *A Gazetteer of Southern India,* by Pharaoh & Co., Madras, 1855.

15. *The History of British India,* by Mill and Wilson in ten Volumes. London, John Madden & Co., Leadenhall Street, 1858.

16. *The National Review, Volume XV.* London, Chapman and Hall, 193 Piccadilly, 1862.

17. *Nouvelle Biographie Générale, depuis les temps les plus reculés jusquà nos jours.* Paris, Firmin Didot Frères, 1862.

THE eight ships which formed, after the repulse of the English fleet, the squadron commanded by La Bourdonnais, anchored off Pondichery on the evening of the 8th July, 1746. * The meeting between the Governor and the victorious admiral was cordial.† There was no reason why it should not be so,

* In all the histories, English as well as French, which have dealt with the relations between Dupleix and La Bourdonnais, the writers have scrupulously followed the version published by the latter. It was reserved for a writer in the *National Review*, who had access to the unpublished documents in the Pondicherry archives, to prove,—as he has proved most clearly,—that for upwards of an hundred years the world had been under a false impression as to the respective merits of these two famous men in this particular instance. It may be asked, why, under these circumstances, Dupleix was himself silent. The answer is, because he was condemned to silence by his Directors, and they had not the manliness to clear him. This fact is evident from the following passage, extracted from the memoirs of Dupleix, published in 1759, long after the appearance of his rival's memoirs, and at a time when he himself was undergoing the severest persecution at the hands of the Company. Even then he would only allude to the transactions he had had with La Bourdonnais in the following cautious manner:—'The Company knows with what ardour M. 'Dupleix supported the project formed against Madras, and with what zeal he 'seconded M. de La Bourdonnais by the promptitude with which he made, 'under very difficult circumstances, all the preparations for this important 'expedition. It knows also better than any one, what was the true cause of 'the contests that ensued between M. de La Bourdonnais and him, after the 'capitulation of that place. But M. Dupleix *respects too much the orders 'of the Ministry and those of the Company to dare to publish that which 'he has been enjoined to bury in the most profound secrecy*, and whatever 'interest he may have in justifying a conduct which he is well aware many 'people have condemned, *this motive, all-powerful though it be, will yield 'always to the law of duty.*'

This is the lofty language of an honest man. Yet for this noble devotion to duty, the reputation of Dupleix, in this one particular respect, has been calumniated for an hundred years. He has been called jealous of La Bourdonnais when he aided him to the utmost of his power, until jealousy for his country's interest forced him to discountenance his proceedings; he has been accused of breaking his plighted word when he had never given it; of base and dishonourable conduct, when he acted as an honourable and far-seeing statesman. The archives of the Company vindicate him completely. Dupleix died the year after the publication of his memoirs. Having connived at his being slandered whilst living, the Directors perpetuated the infamy by leaving the slander uncontradicted after his death. A revolution was indeed required to purify France from the foul and corrupt atmosphere inhaled and breathed out by her governing classes,—from King to East India Directors,—during the greater part of the eighteenth century.

† La Bourdonnais asserts in his memoirs that he was received in an unbecoming *(peu décente)* manner; but even if it were the case, it does not appear, if we may judge from the correspondence, to have affected the friendly terms upon which he consorted with Dupleix for the first few days after his arrival.

for they were striving alike after the same object,—an object which could be attained only by their mutual co-operation. La Bourdonnais held an independent command, but on the continent of India he was subordinate to the Council of Pondichery.* In the contemplated expedition, however, against the English, Dupleix was very willing to give up the entire control of the operations to La Bourdonnais. He was mainly anxious to see that the operations themselves were well-matured, and he was naturally resolved to hold in his own hands the supreme political power. The correspondence between the two had been conducted, as we have seen, in the most cordial manner. Dupleix had declared that the honour of success would belong to La Bourdonnais; that he would use every effort in his power to contribute to that success. He had added: 'I shall esteem myself happy 'to have contributed to it by causes which will only 'derive merit from your conduct and its happy results, 'for which I am ardently desirous. I hope that my pre-'vious assurances, as well as this one, will convince you of the 'light in which I regard the question. I feel too much the 'importance of our union, not to give myself entirely to bring it 'about. Have no fears, therefore, on the score, but count on 'me as on yourself.'† La Bourdonnais had replied in similar terms: 'Be assured,' he wrote from the Malabar Coast on the 21st June, 'that my conduct will be guided as much as possible by your 'counsels. I burn with impatience to embrace you, and to con-'sult with you measures for repairing our losses.' There certainly seemed no reason why these two men should clash.

And yet there was seen here, what the world has seen so often since, an example of the extreme difficulty with which men of

* The order sent from Paris to La Bourdonnais in 1741 provided, that whilst under all circumstances he was to command on the seas, his control over the land forces, in any French settlement beyond the limits of the Isles, was dependent on the authority with which the local Councils might invest him. *Extrait des ordres du Ministre 16th Janvier* 1741. But the orders of 1745 were still less favourable to the independent action of La Bourdonnais. 'The Company considers' wrote the Controller-General to the Council of Pondichery on the 6th October 1745, 'that it is fit and 'proper that the Commandant of the squadron should be present in the 'superior Councils; that he should be summoned to them, when any mili-'tary expedition is discussed in which this officer is to take a principal part; 'that he should have a deliberative voice. But it requires also, that what-'ever matters may be deliberated, and whatever the result of the delibera-'tion, the opinion of the Council be carried out by him without obstacle 'or impediment, even though it should be a question of disposing of all 'the vessels of the Company which he commands." Reference to the bearing of these orders, at the time when they were received, will be found further on.

† Dated 23rd April, 1746, and received by La Bourdonnais at Mahé.

action, accustomed to command,—to plan as well as to execute,—submit to a superior authority. They will obey, it is true, a man of acknowledged genius, in whose hands are vested irresponsible power. Thus Masséna and Ney, Soult and Souchet, acknowledged and obeyed genius and power, combined in the person of Napoleon. But away from the influence of his presence, Ney chafed and grumbled when placed under the orders of Masséna, and even Souchet, able as he was, refused to make a movement which would have given to the French army a great superiority over Lord Wellington, when, as a consequence of it, he would have been brought under the orders of Soult. Perhaps it was, at Pondichery in 1746, that La Bourdonnais, conscious of his own abilities, felt a revulsion which he could not control at being called upon to work under one, who was known to fame chiefly as a successful merchant and trader, and whose skill as a manager of men he had had no opportunity of testing. This is certain, that La Bourdonnais had not been long on shore before he began to adopt a line of conduct entirely inconsistent with his well-known character for enterprize, to show doubt, hesitation, and uncertainty, to refuse to move on an expedition without positive orders from the Council, of which, in virtue of his commission as Admiral, he was a member, to decline even to make an election of the two alternatives which were presented to him,—to go in search of the English fleet, or to sail at once for Madras.

The taking of Madras had been all along regarded by the two French leaders as the first fruits of a decisive victory at sea. A very few days after his arrival at Pondichery, La Bourdonnais addressed a lengthy letter to Dupleix on the subject of his plans, and he thus alluded to the project regarding Madras: 'At the time of our former squadron of 1741, you know 'what designs I had formed upon Madras. Encouraged by 'M. Dumas, to whom I had communicated my project, I 'begged him to communicate it to you, at the time of your 'installation. You approved of it, and made preparations which 'the continued peace rendered useless. Since the outbreak of 'war, persisting in my first design, I have imparted it to you, 'begging you at the same time to add to your former preparations, 'others to facilitate our success. * * * * My plan is to 'destroy or disperse the English squadron, if it be possible; 'the capture of Madras must result.'*

The reply of Dupleix was couched in the same spirit. 'Your idea regarding Madras,' he wrote,† 'is the only one

* Dated 17th July, 1746.
† Dated 20th July, 1746.

'which can indemnify the Company for all its losses and 'expenses, restore the honour of the nation, and procure 'for this colony a more solid footing than hitherto. 'This enterprise is very easy, and your forces are more 'than sufficient to carry it out, but it cannot be attempt-'ed with safety, before the English squadron is destroyed 'or beaten.' As to the treatment of Madras, in case it should fall into his hands, La Bourdonnais had thus, on the 17th July, addressed the Governor-General: 'If fortune favours 'you,' he wrote, 'what do you think we ought to do with 'Madras? My idea is to take possession of and carry off all 'the merchandise we may find there, and to ransom the 'remainder; for if we should raze every stone in the town, it 'would be re-built in a year, and Madras would be much stronger 'than it is now.' The answer of Dupleix on this point deserves to be remembered. He replied, on the 20th June:—'I 'cannot say at present what it would seem good to do with 'Madras; if you should have the good fortune to take it, 'circumstances will decide as to the fittest course to be adopted. 'But I beg you to recollect, that so long as Madras remains as 'it is, Pondichery will languish and its commerce will fall 'off. It is not sufficient to think only of a present and, perhaps, 'an uncertain advantage; we must look forward to the future. 'I am not of the opinion that this town, once dismantled, could 'be restored in a year. It has taken very many years to make 'it what it now is, and the facilities and means for re-establish-'ing it are less than they were for making it.'

In the letter from which we have extracted, La Bourdonnais had given an exact statement of the condition of the armament of his fleet, and had requested Dupleix to supply from the arsenal of Pondichery the deficiencies under which he laboured. He had indented upon Dupleix altogether for forty-four eighteen, and for fourteen twelve pounders. It was not in the power of Dupleix to comply literally with this demand, without weakening, to a dangerous extent, the defences of Pondichery. But he supplied instead a larger number than were demanded. In place of forty-four guns of eighteen, and fourteen of twelve, he sent him, twenty-eight of eighteen, twelve of twelve, and twenty-two of eight, and offered to change those which were only slightly damaged. He accompanied this offer with an explanation so frank and courteous, that it seems surprising that his conduct in this respect should ever have been made the subject of animadversion.*

* After enumerating the necessity that Pondichery should be a strong place, under whose walls French vessels might always find a secure refuge,

Yet notwithstanding the supply of guns, ammunition, provisions, and men,† La Bourdonnais could not make up his mind to set sail. The idea that the English fleet might keep out of sight until it were reinforced from Europe, and, that thus reinforced it might take him at a disadvantage when before Madras, seemed at first greatly to weigh upon him. To obviate this risk, and to draw the English within fighting distance, he proposed, on the 10th August, that a force should proceed to Cuddalore, twelve miles south of Pondichery, to attack Fort St. David, built by the English in its vicinity. If the English fleet were to bear up to assist that fort, he would then attack it; but if it should not, it would be a proof that it had been very severely handled in the former action, and he would have no difficulty in taking Fort St. David.‡

Against this plan, as an alternative to the long meditated attack upon Madras, Dupleix strongly protested. 'Cuddalore 'and Fort St David,' he wrote on the 12th, 'are not worth the 'powder and shot you will expend upon them.' He pointed out that their capture would very probably range the Nawab on the side of the English, and that this would save Madras. 'The 'enterprise against Madras, 'he added,' is the only one which can

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and alluding to the probable increase to their naval enemies by the chances of a war with Holland, Dupleix adds: 'This augmentation of 'enemies, the only thing we have to apprehend, ought to render me more 'circumspect with regard to a place so considerable; the safety of which 'depends entirely on others:' (the victorious course of the French fleet). 'A thousand mishaps, to which sea forces are subject, might disappoint this 'place for a long time of the guns you wish to take from it. The minister 'has given me orders to assist you, and I obey willingly orders so deserv-'ing of respect. But I cannot persuade myself that his intentions are 'that I should risk the safety of Pondichery, I believe, on the contrary, and 'I flatter myself that he will be better pleased, that I should not place it in 'jeopardy. Nevertheless, to act up to his orders and your demands, I am 'ready to make over to you twenty-eight eighteen pounders, twelve of twelve, 'and twenty-two of eight, and to change those which are but slightly 'damaged, and which, after being repaired, can be made serviceable. These 'guns will make a great gap, but the word of honour you give me to return 'them, and the moral certainty I feel of your victory over the enemy, 'permit me to take the step of dismantling the walls with less disquietude.' *M. Dupleix à M. de La Bourdonnais, 20th July* 1746

† The reinforcements furnished by Pondichery consisted of 200 Europeans, 100 topasses or Indo-Portuguese, 300 sepoys, besides officers, in addition to lascars, as well as 170 sailors and 50 European soldiers belonging to the garrison already serving on the fleet.

‡ It is in this letter that La Bourdonnais informs Dupleix of the sickness caused on board his squadron, and from which he himself especially suffered, from drinking the water taken in at Pondichery. In his memoirs, he makes of this a charge against Dupleix, insinuating that it was a part of the general scheme to annoy him.

'indemnify us, and do honour to the nation in India, and I 'cannot agree with you in your plan of abandoning that project 'for one which merits neither your attention nor mine, and of 'which the consequences will be costly and injurious to us.' He continued to urge upon him in a lengthened argument, that two principal objects had brought him to India,—the destruction of the English squadron, and the taking of Madras,—and that abandoning one of those, he ought to attach himself with his whole heart to the other. The day after this correspondence, La Bourdonnais took advantage of a favourable breeze to go in search of the English squadron. He arrived off Karical on the 13th August, and there obtained, with some difficulty, positive information of the enemy. They had been descried on the 10th, six vessels in number, a little to the north of the northernmost point of Ceylon, about fifteen miles off the coast. To the Dutch officer who boarded them they stated that they had been repulsed by the French, but that they were only waiting the arrival of reinforcements to renew the attack. All their damages had been repaired. Satisfied, then, as he stated, that he was free from all attack on that side, La Bourdonnais resolved to return at once to Pondichery, and, arriving there on the 19th, to embark the soldiers, sepoys, and other troops, awaiting him, and to proceed immediately with the grand design against Madras. He added in his letter, however, that his health was greatly enfeebled, and that not for all India would he stay on the coast after the 15th October, when the monsoon would set in. Instead, however, of acting upon this plan, which he had communicated to Dupleix through M. Paradis, the Commandant of the Pondichery garrison, who had been sent to confer with him, La Bourdonnais suddenly changed his mind and went in search of the English. He found them off Negapatam, and endeavoured to bring them to action. But though he hoisted Dutch colours to deceive them, they fled before him, he reported, in a manner that soon took them out of sight.* Thinking that they might return to Negapatam he waited there two days; but not meeting them, he again put out, and on the evening of the 25th, anchored off Pondichery.

This escape of the English and the uncertainty whither they had proceeded, completely changed the views of La Bourdonnais.

* Mr. Orme states that 'the English, perceiving the addition of cannon with which the enemy had been supplied at Pondichery, avoided an engagement.' Mr. Mill simply remarks that the English fled. Mr. Orme's reason would not, we think, be considered sufficient by any English Admiral of the present day. The English ships were mostly armed with 24 pounders, whereas the French had only taken on board twenty-eight 18 pounders, and others of smaller calibre.

He who, on the 14th, when he knew the English fleet to be below Negapatam waiting for reinforcements, had declared his readinesss to proceed with the utmost haste to Madras, had become, on the 26th, after that fleet had sailed he knew not whither, hesitating and doubtful. He dwelt on the difference between commanding King's ships and vessels belonging to the Company. 'In the former' he said, 'one hazards every thing for glory, in the latter one must look to profit,' and he stated his opinion that his squadron was insufficient for the double task of attacking Madras, and beating off the English squadron reinforced by its expected ships. In this difficulty he appealed to the Superior Council for their advice.*

An extraordinary meeting of the Pondichery Council met to consider this appeal. There were present at it thirteen members, and they came to a very decided opinion. This was contained in a letter addressed to La Bourdonnais bearing the same date.† In this letter, after re-capitulating the preparations that had been made, the time that had been lost, the change in the opinions of the Admiral, they set before him the choice of two alternatives. Either, they said, you should go to Madras and attack it, or you should go and drive the English fleet from these seas. At present they are, they said, in a position in which they can intercept every vessel coming from Europe, whilst you are here, effecting nothing now, and talking of leaving us to the mercy of the English fleet in October. They concluded with these words: 'We are 'bound to add also that it would be shameful and disgraceful for 'the nation to abandon these two means, whilst we have a moral 'certainty that the treasure and the vessels which we expect from 'Europe will be taken by the enemy's squadron, and an equal 'certainty that you can succeed in one of the two. It is equally 'important not to render useless the strength of your squadron, 'and the money spent upon it. What reproaches will you not 'have to make yourself, if at the same time that you abandon 'the project which would serve to indemnify us, our enemies 'take possession of the vessels we are expecting from Europe, 'almost within sight of your squadron!'

It is strange,—the transformation which a forced subordination to authority can sometimes make in the entire character of a man. Who would have believed that the daring, energetic leader, who had 'conquered the impossible' at the islands, who had there made ships and sailors, and soldiers and guns, who had sailed across the ocean with his untried crews, and had met and

* M de La Bourdonnais à M. Dupleix, 26 Août 1746.
† Lettre du Conseil Superieur du 26 Août, 1746.

scattered the war-ships of the enemy, that the man whose motto was action, should have suddenly so changed as to call forth an incitement to action couched in the terms we have just given? Yet we have seen in our own day how blind to all perceptions of right, how oblivious even of the ordinary obligations of politeness, how open to the malignant suggestions of whisperers and sycophants, wounded vanity will make even those, who, in other respects, soar far above the common run of their fellow-men. Up to the time of the despatch of that letter, Dupleix and the Council had met every requisition on the part of La Bourdonnais in the most obliging spirit. They had made over to him the particular officers he had asked for, of whom Paradis was one, all the stores, ammunition, and, as we have seen, all the guns they could spare. They had only pressed upon him to act. But the feeling that he was thus under control, that he, who had always impressed his own will upon all around him, should be subject to the will of another, had changed the heart and the blood of La Bourdonnais. The burden of all his letters was, that he could not attack Madras, because the English squadron had not been destroyed, that the English squadron had not been destroyed, because he could not bring it to action, and that he could not stay on the coast later than the 15th October. The meaning was that he would do nothing till then. Even the letter of the Superior Council failed to move him. Plain as were its terms, that he should either attack the English fleet or Madras, he had the boldness to declare that its contents prevented him from moving, because it did not prescribe precisely which of the two courses he was to adopt. Taking the letter in his hand, he declared publicly to all who would listen to him, that the Superior Council was the only obstacle to action on his part. This proceeding thoroughly roused Dupleix. He re-summoned the Council on the 27th, and put before it, for consideration, the course adopted by the Admiral.

The deliberations of the Council at this crisis were short, prompt, and to the point. They resolved to serve on La Bourdonnais a summons, calling upon him 'on the part of the King and the 'Company to make choice of one of the two plans which had been 'presented to him on the 26th,—the only plans we consider practi-'cable, suitable to present circumstances, to the glory of the king, 'the honour of the nation, the interests of the Company, the force 'of his squadron, and the weakness of our enemies by sea and land; 'in default of doing this,—of the choice of which he is left master,—'to be held responsible in his own name for all that may happen in 'consequence, as well as for all the expenses which his project 'on Madras, so long meditated and conducted to the point of

'execution, has occasioned the Company. If hindered by sick-'ness from acting himself, as there is no time to lose and 'moments are precious, the Council consider M. de la Portebarré, 'of whom the capacity and prudence are known, to be very 'capable of executing whichever of the two plans he may select.'

The reply of La Bourdonnais was short: 'I have received,' he wrote, 'the citation and its contents. I consulted the Council of 'Pondichery only regarding the affair of Madras. It rested 'with it to give its opinion for or against that. As to the desti-'nation of my squadron, it has no right to interfere with it. I 'know what I ought to do, and my orders have been given for 'it to leave Pondichery this evening.'*

The fleet accordingly sailed under M. de Portebarré,† La Bourdonnais himself alone remaining behind on account of his sickness. The squadron sailing along the coast succeeded in capturing two small vessels in the Madras roads. It then returned to Pondichery. The health of La Bourdonnais, meanwhile, had improved, and his announced determination to attack Madras seems to have improved his relations with the Council. On the evening of the 12th, accordingly, he embarked to proceed on this long meditated enterprise. On the 14th, approaching the shore, twelve miles south of Madras, he landed 500 or 600 men, with two pieces of cannon. Sailing slowly, parallel with these troops, on the 15th, he arrived at midday within cannon shot of the town. He then landed with 1,000 or 1,100 Europeans, 400 sepoys, and 300 or 400 Africans, and summoned the place to surrender. He had still from 17 to 1,800 men on board his squadron.

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* A Messieurs du Conseil Superieur de Pondichery, 27 Août, 1746.

† Mr Mill states, that Dupleix carried his 'unfriendly proceeding' so far as to command La Bourdonnais to 're-land the Pondichery troops.' It is very true that on the 27th August, knowing only, by the reply of La Bourdonnais to the citation, that the fleet was to leave, but ignorant of the direction it was to take, or the object on which it was to be employed, Dupleix directed the re-landing of 250 soldiers and 100 topasses with their officers, assigning the following as a reason: 'The distance which 'your squadron may find itself from this place by some event which 'God alone can foresee, and *these troops being useless in your vessels*, 'I beg you to disembark the troops above referred to, in order that I 'may be in a condition to answer to the king for the place which he has 'confided to me, &c.' But it is not less true that on receiving in reply from La Bourdonnais a letter of the same date, informing him of the destination of the squadron, that it was 'to sweep the Madras roads,' and that it would not be absent for more than eight or ten days, he withdrew from the squadron only 125 Europeans and 50 sepoys, retaining these for the defence of Pondichery.

Fort St. George, and the town of Madras, of which it formed the defence, had been built upon a plot of ground, which the last of the Hindoo rulers of Bijianugger had made over to the English in 1639. Fourteen years later, the little settlement had been raised to the rank of a Presidency, and it constituted for a long time afterwards the principal emporium of the English in India. It was not very well situated for that purpose. On a bluff point of the coast, where the current was always rapid, and exposed to all the violence of the monsoon, and the inconvenience of a surf which made navigation for English boats impossible, it would have been difficult to find a position less adapted for commercial purposes than Madras. The roadstead was dangerous during some months of the year, especially from October to January, so much so, that on the appearance of any thing approaching to a gale during those months, vessels were forced to slip their anchors, and run out to sea. Nor did the fertility of the neighbouring country compensate for these disadvantages. The soil was hard, dry, and barren; the population poor and sparse. In those days, however, it was apparently the custom of the different European nations to select, as their settlements, points on the coast in as close a contiguity to one another as was possible. And the situation of Madras probably owed its value in the eyes of Mr. Day, the English merchant who negotiated for the land, to the fact that it was but four miles from the Portuguese settlement of St. Thomé.

But notwithstanding its unfavourable situation, the industry and enterprise of English settlers soon brought prosperity to Madras. In 1687, the native population, attracted thither by the protection and the opportunities of traffic they enjoyed under the English flag, amounted to 3,00,000, and the revenue, derivable from taxation, was estimated, nine years later, at about 1,60,000 Rupees, equal, allowing for the probable increase of population during that period, to a capitation tax of eight annas. In 1696, Mr. Thomas Pitt, the grandfather of the great Commoner and possessor of the famous Pitt diamond, became Governor, and held the office for eleven years. It was during his administration that Madras first came into hostile contact with the native princes of the country. Daood Khan, Nawab of the Carnatic under the Emperor Aurungzebe,—a chief noted for his fondness for the strong waters of Europe,—made a sudden demand upon Mr. Pitt, (1702,) for ten thousand pagodas, about forty thousand Rupees. Mr. Pitt endeavoured by civilities and sumptuous entertainments to amuse the Nawab into forgetfulness of his demand. But if Daood Khan loved cordials much, he loved rupees even more. Finding his requests evaded,

he subjected Fort St. George to a strict blockade, cut off all supplies from the country, seized all the goods coming into the place, and only raised the siege when Mr. Pitt consented unwillingly to a compromise. In addition to Madras, and subordinate to it, the English possessed at this time, on the Coromandel coast, the settlement of Fort St. David, close to Cuddalore, sixteen miles south of Pondichery, and the factories of Porto Novo, Pettipolee, Masulipatam, Modapollam, and Vizagapatam. It does not appear that the history of Madras was marked by any other incidents of importance till the period of which we are treating. In the year 1744, Mr. Nicholas Morse was appointed Governor of Fort St. George. Morse was an old Company's merchant, ignorant of politics, caring little for them, a quiet, easy-going, useless sort of man, who ever carried out, with a literal obedience, and regardless of any changes that might have occurred in the interval, the orders of his masters in England. Thus it was, that when shortly after his accession to office, he received overtures from Dupleix to preserve neutrality in India during the coming war, Governor Morse, well-convinced, all the time, of the wisdom of the measure, excused himself from entertaining it, on the ground of the instructions he had received from the Company.

We have seen how little these instructions had availed the English. With the command of the seas, when the war broke out, they had, nevertheless, been prevented by the interest of M. Dupleix with the Nawab Anwaroodeen, from profiting to the full extent from their advantage. A positive prohibition had been placed upon them with reference to the French settlements on the coast, and they had been compelled to confine their operations to the capture of stray merchant-men on the seas. The Court of Directors, deeming themselves secure of conquest, had never contemplated the possibility of Madras being in danger. They had, therefore, altogether neglected to supply soldiers for its defence; nor does it appear that the contingency of defence being necessary ever presented itself to Governor Morse. When, therefore, the news in quick succession reached Fort St. George, that La Bourdonnais' squadron had left the Isle of France, that it had engaged and repulsed the English squadron off Negapatam, that it had arrived at Pondichery, and was making preparations for an attack upon Madras itself, the surprise and consternation which prevailed amongst its residents may perhaps be imagined. The defences of Fort St. George were certainly not very formidable. The Fort itself was an oblong, four hundred yards by one hundred, surrounded by a slender wall, defended by four bastions and four batteries, very slight and defective in their construction, and with no outworks to defend them. The English

garrison consisted of three hundred men, of whom thirty-four were Portuguese vagabonds, deserters, or negroes; sixty were sick and ineffective, and only two hundred fit for duty. The officers were three lieutenants, two of whom were foreigners, and seven ensigns who had risen from the ranks*.

In his extremity, Governor Morse applied to the Nawab of the Carnatic. It will be recollected that when this nobleman had forbidden the exercise of hostilities by the English against any place in the possession of the French on the Coromandel coast, he had accompanied his order by a promise, that should the French at any future time obtain the superiority, he would place similar restrictions upon them. The event, which had then seemed so improbable as to be impossible, had now happened. The French were preparing to attack the English settlements on the Coromandel coast. Governor Morse, therefore, claimed at once the interference of the Nawab.

It cannot be supposed that a man possessing the Indian experience of Governor Morse was unacquainted with the formalities necessary for approaching an Indian ruler. It is, nevertheless, certain, that he managed the mission to the Nawab,—a mission, on which the very existence of the English at Madras seemed to depend,—in such a manner as to militate very much against its chances of success. It is a time-honoured custom in Eastern Courts that an envoy should never go into the presence of the Prince to whom he is accredited empty-handed. Whether the custom is good or bad is not the question. It is a custom, the form of which is kept up by the English even in the present day; to neglect it, in the days of which we are writing, was regarded as nothing less than an insult. But Governor Morse, in his blunt English way, as though he had been dealing with his own countrymen, did neglect this precaution. He sent his messenger empty-handed into the presence of the Nawab, bluntly to remind him of his promise, to claim for the English that protection which he had so recently accorded to the French messenger, well-provided with presents, and to beg the Nawab's permission to punish his rivals. It thus happened that, when the English messenger arrived, he found the Nawab apparently undecided, and though that nobleman declined to give any formal permssion to the French to attack Madras, he refrained, equally to their advantage, from giving utterance to a direct prohibition.

Governor Morse was under the influence of the disappointment attending his negotiations with the Nawab, when, on the 29th August, the fleet of La Bourdonnais appeared in the

* East India Chronicle.

roadstead. The unskilful manner in which the squadron was handled made it evident, however, to the garrison of Fort St. George, that the famous Admiral who had brought the ships from the Isle of France was not with them.* Seeing nothing of the English fleet, and finding the way open, the officer commanding the squadron, M. de Portebarré, contented himself, as we have seen, with making prize of two merchantmen he found on the roadstead, and then returned on the 5th September to Pondichery. Eight days after, La Bourdonnais embarked, and arriving before Madras on the 15th, summoned it, as already recorded, to surrender.

Up to this point, Governor Morse had been partially sustained by the hope, that Commodore Peyton would yet be prepared to strike a blow for the preservation of the principal English settlement on the Coromandel coast. But these hopes were destined to be disappointed. Almost simultaneously with the arrival of the French fleet, he received the disheartening intelligence, that the Commodore with all his ships had appeared on the 3rd September off Pulicat, and had then borne up for Bengal. That leaky sixty gun-ship was again assigned as the reason for the desertion of Madras, the excuse for avoiding a trial of strength with the battered squadron of La Bourdonnais.

Meanwhile, La Bourdonnais, having landed his troops on the 15th, prepared, on the evening of that day and during the 16th, to erect batteries which should play upon the town. On the 17th, the native portion of the garrison made a sortie, but they were easily repulsed, and the French, following up their success, took possession of the Governor's house,—about half-musket range from the walls of the town,—and fortified themselves in it. On the 18th, early in the morning, they commenced the bombardment from their land batteries, and as soon as night fell, the three vessels of the squadron possessing the strongest armament opened fire on the town. A circumstance occurred in the course of the night of the 18th, which shows how easy it would have been for Commodore Peyton, commanding as he did a squadron which sailed better than that of the French, to have saved Madras. On the 17th September, four ships were sighted off Pondichery. Dupleix conceiving they might be part of the English squadron, wrote off hurriedly to La Bourdonnais with the information. To him this was most startling. Had it been true, it would have been but a confirmation of the views which he had so often pressed upon Dupleix, that to attempt the siege of Madras before the English fleet had been destroyed, was

* Orme, I. 66.

the height of rashness. He himself declares that he felt, under these circumstances, that but one path lay before him, and that was to push the siege with the utmost vigour. Mr. Orme, indeed, asserts, though upon what authority we know not, that 'the report caused so much alarm in the French camp, that 'they were preparing to re-ship their heavy cannon.' However this may have been, this at least is certain, that had Commodore Peyton borne up at that moment for Madras, and attacked the half manned French fleet in the roadstead, he would have inflicted upon it very great damage, even if he had not compelled the raising of the siege.

But on the morning of the 19th, an express arrived from Dupleix, stating that the information regarding the strange ships was incorrect. Relieved on this point, yet not knowing how soon a hostile squadron might appear, La Bourdonnais pushed the siege with vigour, and with such effect, that in the evening he received a letter from Mrs. Barneval, the daughter of Madame Dupleix, and married to an English gentleman in Madras, offering on the part of Governor Morse to treat.

The reply of the French Commander being favourable to such a course, Messrs. Monson and Hallyburton presented themselves on the following morning in the French camp. They proposed to enter into negotiations to pay a certain sum to induce La Bourdonnais to retire from before the town. This, however, in unmistakeable terms, the Frenchman refused, and the deputies returned to demand fresh instructions from the Governor. On the departure of the deputies, the fire re-commenced, and continued till 3 o'clock. Between that hour and 8 o'clock in the evening, however, no one appeared on the part of the English, except a foreigner in the service of the Nawab, without powers or authority to negotiate. At 8 o'clock, therefore, La Bourdonnais re-opened the fire, and maintained it throughout the night both from the land batteries and the ships. The re-appearance of the English deputies on the following morning caused it to cease.*

This time, these latter were armed with full powers to capitulate. After some discussions, they agreed to the conditions, of which the following are a free summary.—They agreed, first, to make over to M. de La Bourdonnais at 2 P. M. on that day, the 21st September, Fort St. George and the town of Madras with their dependencies. All the garrison, and generally all the English in the town, to become prisoners of war. All the

* The French did not lose a single man in the siege: the English only five. *Grose's East Indies.*

councillors, officers, employés, and other gentlemen in the service of the Company to be free on their parole, to go and to come as they wished, even to Europe; provided only they did not carry arms against France, offensively or defensively, without being exchanged.

The articles of the capitulation having been signed, it was arranged that those regarding the ransom of the place should be regulated in a friendly way by M. de La Bourdonnais, the Governor, or his deputies, the two last engaging on their part to deliver faithfully to the French the goods and merchandises received or receivable from merchants; the books of account, the arsenals, ships, provisions of war and supplies, together with all the property appertaining to the English Company, without reserve; besides materials of gold of silver, merchandises, goods, and any other effects whatever, contained in the fort or town, to whomsoever they might belong, without exception.

The garrison was to be conducted to Fort St. David, as prisoners of war. But should the town of Madras be ransomed and restored, the garrison might be allowed to re-occupy it, as a means of defence against the natives. But in this case, an equal number of French prisoners, (made elsewhere), were to be restored to the French.

The sailors were to be sent to Cuddalore, and their exchange begun with those actually in Pondichery, the remainder to proceed in their own ships to England. But they might not carry arms against France until regularly exchanged, either in India or in Europe.

On the same day that this capitulation was signed, La Bourdonnais wrote a few hurried lines to Dupleix. His first letter, dated 2 P. M. on the 21st, simply states that he had just entered Madras at the head of 500 men, and that the white flag had been hoisted on the ramparts. The second, dated 8 P. M. of the same day, is more important, as shewing the view which La Bourdonnais entertained at the time, regarding the conditions he had granted. In this he says,—'The haste with which I informed you of the taking 'of Madras, did not allow me to enter into any detail; I was 'too much occupied in relieving the posts of this place. 'The English surrendered to me with even more precipitation 'than I wrote you. I have them at my discretion, and the 'capitulation which they signed has been left with me, without 'their having dreamt of demanding a duplicate.'

Two days later, the 23rd, he wrote a long report, in which he discussed the whole question of the future. This letter began thus: "At last, Madras is in French hands. The

'conditions on which it surrendered, place it, so to say, at 'my discretion. There is, nevertheless, a sort of capitulation 'signed by the Governor, of which I subjoin a copy; but it 'does no more, as you will see, than authorize me to dispose 'of the place.'

It would appear from these extracts, and from the tenor of the capitulation itself, that Madras had surrendered at discretion; that the town, the fort, and everything belonging thereto, had become absolutely French property. It is equally clear that there had been some discussion between La Bourdonnais and the English deputies regarding a ransom, but that it was finally resolved to leave this question for future adjustment.*

* La Bourdonnais thus describes in his memoirs the engagement he entered into regarding the ransom. 'The next day, the 21st, the deputies returned 'for the second time, and agreed at last to surrender on the conditions 'which had been proposed to them the previous evening, that is to say, 'on the condition of being permitted to ransom the town. Immediately 'the articles of capitulation were written out, Mr. Hallyburton took them to 'the Governor, who, having examined them, sent them back by the same Mr. 'Hallyburton, with orders to represent to M. de La Bourdonnais, that 'neither the Governor nor the Council ought to be regarded as prisoners 'of war, so long as the question of the conditions of ransom should be 'under consideration. Upon this representation, M. de La Bourdonnais, who 'wished the Governor and his Council to remain prisoners of war, until 'these conditions should be agreed upon, contented himself with assuring 'the deputies, that he would give an act of liberty to the Council and the 'Governor, as soon as they should agree with him regarding the ransom. 'The deputies having then demanded that this proposition should be 'inserted in the capitulation, M. de La Bourdonnais consented, and it was 'made an article. The deputies then took back the capitulation to the 'Governor, who signed it. In bringing it back again, they asked M. de La 'Bourdonnais for his parole, as an addition to the promise regarding the 'ransom. 'Yes, gentlemen,' replied he, 'I renew to you the promise I made 'you yesterday to restore to you your town, on condition of a ransom 'which we will settle in a friendly way, and to be reasonable regarding the 'conditions.' 'You give us then your word of honour,' answered the 'deputies. 'Yes,' said he, 'I give it you, and you may be assured that it is 'inviolable.' Very well,' replied the two Englishmen, 'here then is the capitu-'lation signed by the Governor, you are now master of the town, and you 'can enter it when you like.'

It must always be borne in mind, however, when reading the memoirs of La Bourdonnais, *1stly*, that they were written some time after the events described, and *2ndly*, that they were written with the view of exculpating himself from specific charges brought against him. Now, the question of the ransom, and especially the question, as to whether any absolute engagement was entered into at the time of the surrender, formed one of these specific charges. On such a point, therefore, it is necessary to read La Bourdonnais' own statement with the greatest caution. The official correspondence is a far surer guide. Let us see what that says. We have given all that relates to the proceeding relative to the surrender, in the text. From this

Meanwhile, the intelligence had reached the Nawab Anwaroodeen, that the French had really carried out their intentions, and had laid siege to Madras. Inclined as this prince undoubtedly was to French interests, nothing was further from his intention than to permit their establishing themselves on the territories of their European rivals. He, therefore, at once despatched a messenger on a swift dromedary to Dupleix, the bearer of a letter, in which the Nawab expressed his surprise at the events passing at Madras, and threatened that unless the operations against that place were instantly put an end to, he would send an army to enforce obedience to his commands. But Dupleix thoroughly understood Asiatics. Determined not to forego his designs on Madras, yet unwilling to bring down upon himself the hostility of the representative of the Mogul, he devised a plan whereby, as he thought, Madras would be lost to the English for ever, even if it were not gained to the French. In accordance with this idea, he sent instant instructions to his agent at Arcot, to inform the Nawab that he was conquering Madras for him, and that it was his intention to make it over to him on its surrender.

Well acquainted with the vague ideas regarding the ransom of Madras, to which La Bourdonnais had given utterance in previous correspondence, it became imperatively necessary for Dupleix to make known to that officer the engagement into which he had just entered. At 8 P. M., on the evening of the 21st, therefore, he despatched to him a special messenger conveying a letter, in which La Bourdonnais was informed of the negotiation with the Nawab, and was specially warned to entertain

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we find, first, that no mention is made of any promise regarding a ransom. In the letter dated 8 P. M. of the 21st, written only six hours after the interview he describes above, La Bourdonnais says,—'The English surrendered to me with even more precipitation than I wrote you. I have 'them at discretion.' Not a word about ransom. In the more elaborate letter written two days later he writes,—"The conditions on which it 'surrendered, place it, so to say, at my discretion. There is, nevertheless, 'a sort of capitulation signed by the Governor, of which I enclose a copy; '*but it does no more, as you will see, than authorise me to dispose of the* '*place.*' Again, not a word of the solemn and reiterated promises recorded at such full detail in the memoirs!

If, further, we examine the capitulation itself, we shall find everything conditional. There had undoubtedly been some discussion regarding a ransom, but the question had been referred for further deliberation; that it was a doubtful one is, we think, shown by the words employed in the fourth article, in which it is stated, that 'if the town is restored by ransom, then 'the English, &c., &c.'

However this may be, it is certain that there was no occasion for La Bourdonnais to make such an offer, Madras being completely at his mercy; and, likewise, that it was entirely opposed to the views to which he knew that Dupleix, his superior officer on Indian soil, entertained.

no proposals for the ransom of Madras after its capture, 'as to 'do so, would be to deceive the Nawab, and make him join our 'enemies.'*

This letter reached Madras on the night of the 23rd. Before its arrival La Bourdonnais had, as we have seen, sent to Dupleix a copy of the capitulation, together with a long letter in which he entered fully into the subject of the reasons by which he had been actuated. Three courses he stated were before him. He might either make Madras a French colony; he might raze it to the ground, or he might treat regarding its ransom. † The first he did not consider advisable, because it was not, in his opinion, for the interests of the Company, that they should have on the same coast, and in close vicinity to one another, two rival establishments. He added: 'by the first orders received from the 'Minister, I was forbidden to keep any conquests:‡ it is

* The perusal of this letter, will leave no doubt on the reader's mind of the sincerity of Dupleix's negotiations with Anwaroodeen. He writes:—'I 'have informed the Nawab through my agent at Arcot, that as soon as we 'are masters of the town of Madras, we will make it over to him, it being 'well understood, in the state in which we may think fit,' meaning, he would first raze the fortifications. He adds,—'This information ought to 'determine you to press the siege vigorously, and *not to listen to any 'propositions which may be made you for the ransom of the place after its 'capture, as that would be to deceive the Nawab and make him join our 'enemies;* besides, once masters of the place, I do not see with what the 'English will be able to ransom it So long, too, as Madras remains as it 'is, it will always be an obstacle to the increase of this place. I beg you to 'weigh well these considerations.'

Dupleix to La Bourdonnais, dated, Pondichery, 21st September, 1746, 8 P. M.

† The fact that, in this letter, which accompained the capitulation, La Bourdonnais expressly considers himself at liberty to decide upon one of the three courses indicated, two of which would have rendered the ransom of the place impossible, proves conclusively that up to the 3rd, he had entered into no binding engagements to ransom Madras, and that the story related in his memoirs was manufactured afterwards.

‡ As this is the only place in the entire correspondence in which La Bourdonnais alludes to the prohibition on the part of the French Ministry to keep any town or settlement conquered from the enemy, and as, nevertheless, he uses it in his memoirs as a principal justification of his conduct; as, moreover, Mr. Orme, Mr. Mill, and other writers of Indian history down to the latest, Mr. Marshman, have adopted without examination the assertions of La Bourdonnais on this point, it becomes necessary to subject those assertions to the test of critical enquiry.

It is perfectly true that the French Ministry had sent to La Bourdonnais an order, prohibiting him 'from taking possession of any settlement or 'comptoir of the enemy for the purpose of keeping it;' but even independently of the circumstance that such an order did not render necessary the restoration of the captured place to the enemy, it is a fact that this order bore no reference to the campaign in which La Bourdonnais was engaged in

'certain that at the peace, the surrender of this place would form 'one of the articles of the treaty, the king will restore it, and 'the Company will have no advantage from it.'

Against the second plan, the destruction of the place, he argued, that it would be impossible to prevent the English from establishing on the coast some other emporium equally fit for their purpose, and at a less expense than they would now willingly pay for the ransom of Madras. He then added that his opinion was strongly in favour of that plan, and that there would be no difficulty in carrying it out, as Governor Morse was ready to

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1746. It is true, that in his memoirs, he places it among other orders issued in 1745 and 1746, to all of which the date is attached, but he has curiously omitted to assign any date to this one. The fact is, it was issued in 1741, at a time when La Bourdonnais had just been placed at the head of a combined fleet of King's and Company's ships to cruise in the Eastern seas, the moment hostilities should break out. But even, under those circumstances, it was not intended to be prohibitory in its action. As Professor H. H Wilson justly remarks:—(Wilson's Mill, Vol. III., page 49. *Note*). 'The 'letter to the proprietors explains the purport of M. La Bourdonnais' instruc- 'tions more correctly (than Mr. Mill had stated). He was not to form any 'new settlement, and the only alternatives in his power with regard to 'Madras were to restore or destroy it. The object of the French East India 'Company was to improve their existing settlements, at least, before new 'ones were established.' Thus, even when originally issued, the real purport of the order was very different from that which La Bourdonnais assigned to it. But the circumstances of 1746 were far different from those of 1741. In 1746, he was acting on territory, which the moment it became French by conquest, fell at once under the sway of the Governor-General of French India. It was clearly beyond his authority to maintain, that because, when conducting an independent cruise five years before, he had been restrained from making conquests that were to be permanent, he was, therefore, restricted from carrying out then the instructions of one who had supreme authority on all Indian soil that had become or that might become French. The following extract from the commission borne by Dupleix shows very clearly that his powers were of that extensive nature. He was nominated 'Governor of the town and 'Fort of Poudichery, and of the places subordinate to it, President of the 'Superior Council, to command there, not only the inhabitants of the 'said places, the clerks of the Company who and other inhabitants established 'there, but all Frenchmen and foreigners who may establish themselves 'there hereafter, of whatsoever quality they may be; likewise all officers, 'soldiers, and *gens de guerre* who may be there, or in garrison.' Further he 'was ordered 'to do generally whatever he might consider proper for the 'preservation of the said *comptoirs* and commerce, and the glory of our name, 'and to be entitled for the said charge to the accustomed honours, authority, 'pre-eminence, and prerogative, and to all the appointments ordered by the 'Company.' Further, all the officers and servants of the Crown and clerks of 'the Company were ordered to recognise the said Sieur Dupleix in the said 'quality of Governor and President of the Superior Council, and to obey him, 'without contravention in any sort or manner on pain of disobedience.' The orders of October 1745 were even more categorical in their assertion of the supreme authority of the Governor of Pondichery on Indian soil.

give bills on England for the amount demanded, and to make over eight or ten hostages till payment had been made. This letter, with the capitulation accompanying, was sent to Pondichery by M. Paradis, the commandant of the Pondichery contingent. On the following day, La Bourdonnais wrote a short note to Dupleix summarising his arguments, and begging that he might be furnished with the ideas of the Governor General as to the manner in which Madras should be treated;* and on the 25th, he sent a formal reply to a letter he had received from the Superior Council of Pondichery thanking him in the name of the nation for the difficulties, the cares, the labours, the fatigues, he had experienced and overcome,—which contained this remarkable expression: 'I have received the 'gracious letter you have done in the honour to write me on 'the subject of the taking of Madras; after the thanks you 'have to render on that account to the God of armies, it is M. 'Dupleix who deserves your gratitude. His activity, his attentive 'care in supplying me with all that I needed for the siege, were 'the chief causes of its success.'

We have thus alluded in detail to the course pursued by La Bourdonnais after the taking of Madras, in order that no doubt might exist in the mind of the candid reader, as to the actual occurrences of that much canvassed period. We think it is clear, 1*stly*, that La Bourdonnais had, as commander of the expedition, no right to conclude any definitive treaty with the English, without the consent of the Governor General of French India; 2*ndly*, that up to the 25th September, the fifth day after the capitulation, no such definitive treaty had been entered into, although there had been some conversation regarding a ransom; and 3*rdly*, that, up to that date, the feelings of La Bourdonnais, gratified by success, had been most friendly towards the Pondichery authorities. He had even gone out of his way, as we have seen, in a letter to the Superior Council, to render justice to Dupleix.

We have now to refer to that action on the part of Dupleix and the Pondichery Council, which changed that friendly feeling into one of fierce and bitter hostility, ruinous alike to the cause and to the leader. But before doing this, we must examine at some length the motives which influenced Dupleix in the responsible position which he occupied, in deciding upon his course of action.

* Dated, 24th September, 1746. The actual words were, 'Faites moi donc, 'Monsieur, un plan suivi de la façon dont vous pensez que je doive traiter 'cette ville:' a request, which shows very plainly that no positive engage-'ments to ransom the town had been entered into on the 21st.

There can be no doubt but that at this period, the main object of the policy of Dupleix was the expulsion of the English from the Coromandel Coast. The experience of the three preceding years had taught him that the safety of the one European power could only be assured by the expulsion of the other. It had tasked all his energies, he had had to draw upon all his resources, to preserve Pondichery from the dangers which had threatened it in 1744. But for the prohibition given by the Nawab Anwaroodeen, the French settlements must then have been destroyed. But that was a reed upon which it would not be wise to lean for ever. The successor of Anwaroodeen might not be animated by the same sentiments; another incursion of the Mahrattas might render powerless the representative of the Mogul; or anarchy might again prevail, as it so recently had prevailed, throughout the Carnatic. That he could not depend upon the French Ministry, or on the Directors of the French Company, the events of the last few years had fully convinced him. With a three years' warning of the hostilities that were pending, the men who governed French India in Paris had literally starved their most important dependency. They had sent it neither ships of war, nor money, nor even good intelligence. Hesitatingly and fearfully they had despatched two merchant vessels in as many years, with most inadequate supplies. Nay more, when another enterprising Governor had proposed a plan, whereby, at the smallest amount of risk, the ascendancy of France in the East could have been secured, and had wrung from the aged Minister an assent, they had taken the earliest opportunity to cancel the scheme, and had deprived the Governor of the means by which he had hoped to carry it into execution.

From France then Dupleix had little to hope. On the other hand he beheld England thirsting to destroy him, England strong in the energy of her sons, the resources of the Indian Company, and, more than all, in her comparative good Government. He had seen that in the year which was now going on, England had acted as La Bourdonnais had proposed to act, and had thereby reaped the most important results. That stroke on the part of England, but for the interference of the Nawab, would have destroyed him. The superior energy and good direction of the England of the eighteenth century over the France of Louis XV., could not then have failed to impress him with the belief, that, in all probablity, an opportunity would be afforded to the English of renewing the attempt under more favourable conditions.

What then formed his chance of success at such a conjuncture? Surely there was but one. It was to adopt that policy, even

then consecrated by genius, the policy of Alexander, of Hannibal, of Gustavus,—to carry the war into the enemy's country, and to use the means, which had been so wonderfully, so unexpectedly, placed at his disposal, to crush him at once and for ever. Madras once in his hands, Fort St. David could scarcely hold out, and then, secure of the Coromandel Coast, it might be possible to despatch a fleet to Bengal, to destroy the settlement which had rivalled, and was now threatening to surpass, his own tenderly nursed settlement of Chandernagore.

Such being his views, his mortification may be well conceived, when he learned that notwithstanding his previous warnings, notwithstanding the positive arrangement he had made with the Nawab, La Bourdonnais was still harping upon the ransom of the place which he had conquered. The result of this he felt could only be, that the moment the English fleet should recover its former superiority in the Indian seas,—an event daily dreaded alike by Dupleix and La Bourdonnais,—an attempt would promptly be made to subject Pondichery to the fate of Madras, an attempt of which, if successful, the English would undoubtedly take the fullest advantage.

Impressed with these ideas, he wrote on the 25th September a letter to La Bourdonnais, in which, whilst reminding him that according to the orders of the Minister, he was subject to the authority of the Superior Council of Pondichery, he pressed upon him the necessity of abandoning all notion of a ransom. 'The 'ransom which you are thinking of demanding from Madras', he said, 'is only a momentary, and, at the most, an uncertain 'advantage. All the hostages which you may have will not 'bind the English Company to accept the bills which the 'Governor may give you, and he, now a prisoner, will probably 'say that he has acted under compulsion to procure his freedom, 'and the Company will say the same.' The same post conveyed to La Bourdonnais an official letter from the Superior Council on the same subject.

This letter, and the tone of superiority which pervaded it, seem to have decided the action of La Bourdonnais. It would appear that up to, and during, the 26th September, he had been engaged in discussing with Governor Morse and the English deputies the terms of ransom. On the morning of the 26th, he wrote to Dupleix to state that he had almost agreed with Mr. Morse regarding the conditions; that there remained only a few slight differences to adjust, and to arrange the terms of payment. But during the 26th, he received from Dupleix not only the letters to which we have alluded, but another from the Council, dated the 24th, in which he was informed that Messrs. Dulaurent

and Barthélemy would arrive that day from Madras, to congratulate him on his success, and to form with M.M. Desprémesnil, Bonneau, Desforges, and Paradis,—all Pondichery men, a Council, over which he was to preside. Instantly his part was taken. He states in his memoirs that from that moment he could not doubt the views of Dupleix; that he saw that he was resolved to be master of Madras and of the ships, to dispose of all as he wished. The assumption of such superiority he resolved at once to dispute.

Although the ransom-treaty was not then signed, he wrote to Dupleix as though it had been: 'I wish with all my heart,' he said, 'that the deputies had arrived five or six hours earlier; 'there would have been time then to inform them of all that passed 'between the English Governor and myself. But all had been 'concluded at the time of their arrival.' He added: 'if nevertheless 'these gentlemen wish to employ themselves during their stay 'in this town, I will find them employment.' At the same time he addressed the Council, taking up high ground; acknowledging that all the then French establishments in India were under the Governor General of Pondichery, he claimed the right of disposing of Madras, because he had conquered it. He disavowed, in fact, all subordination to Pondichery. The next morning he put the seal to his declarations, by sending to Madras the copy of an unsigned convention with Governor Morse, by which he bound himself to restore Madras to the English on receiving bills for 1,1,00,000, pagodas, payable at certain dates not very distant.*

Then ensued between the two men, a contest injurious to the cause which they had equally at heart, to the country to which they belonged, and fatal in its result to the fortunes of one of them. Dupleix feeling that this restoration of Madras was in effect to leave Pondichery open to attack, the moment La Bourdonnais and his squadron should have sailed to the islands, determined to maintain the authority which the King and the Company had conferred upon him. La Bourdonnais, on his side, unwilling to submit to any authority, and impatient of all control, declared that the Minister having left to him, as Admiral, the sole conduct of his operations, he was even on Indian soil independent of the Government of Pondichery. Admitting that the phrase, 'master of his operations,' used by the French Minister to La Bourdonnais, seemed to convey to him an independent

* Equal to four lakhs and forty thousand rupees. The terms were 500,000 pagodas, payable in Europe at six months' sight, in five letters of exchange of 1,00,000 each; and 6,00,000 in three equal payments of 2,00,000 pagodas each, the first payment to be made one month, and the second one year after the arrival of the ships from Europe.

authority, it was manifest that it could never have been the intention of the French Government thus to establish a second supreme authority, an *imperium in imperio*, within a few miles of the seat of their Government. Yet, La Bourdonnais cared little for such considerations. Although, before starting on this expedition from Pondichery, he had carried his recognition of the authority of the Council to such an extent as to refuse to act without a positive order from them; he now, when the victory had been achieved, and when he was required by them to carry out their instructions, as emanating from an authority paramount to his own, daringly disavowed his subordination, and refused to recognize their supremacy.

It may not be out of place to enquire here, what it really was, what was the motive reason that prompted him to this insubordination, to this sacrifice of the best interests of his country. Was it solely because he deemed his own policy to be the correct policy? That could hardly be. No one had felt more strongly than La Bourdonnais, that it would be impossible for him to remain on that coast with any degree of safety, later than the first month in October. His plan had been to send two or three of his ships to winter at Acheen, and to bear up with the remainder, laden with cargoes, for the islands *en route* to France. Yet, it was not once or twice, but many times, that Dupleix had explained to him, that, under those circumstances, Pondichery would be in the greatest danger. Unprotected by a squadron, having incurred the wrath of the Nawab, and invited the retaliation of the English, nothing but the return of La Bourdonnais in the spring, with an overwhelming force, could have long saved the French capital, situated as it was between two English settlements,—Fort St. George and Fort St. David,—from capture. The ransom of Madras, then, not for cash, but for bills of exchange not then accepted, with the vision looming in the future of that Madras shortly being in a position to demand a ransom from Pondichery, could not have seemed, even to La Bourdonnais, a sound policy for France.

But there is another light in which it is necessary to regard the transaction. Let us enquire whether, though it was not a sound policy for France, it did not seem a sound policy for the private interests of La Bourdonnais. And here we meet with some revelations which cannot fail to startle. We have seen in the course of the preceding narrative, that during the six days from the 21st to the 25th September, a negotiation had been going on between La Bourdonnais and Governor Morse, as to the amount and the terms of the ransom. But besides the question of public ransom for Madras, there was the other, perhaps equally

weighty question, of private present to La Bourdonnais. That he did receive * a considerable present is apparently undeniable, and, though such a transaction accorded with the customs of India in those early days, this acceptance of money must, in almost every case, have considerably influenced the conduct of those who

* It was charged against La Bourdonnais in his life time, that he had accepted a present from the English of 1,00,000 pagodas (about four lakhs of rupees) as the price of the ransom-treaty made with the English.

The charge was brought forward separately by M. Desprémesnil and M. Kerjean. The first said, that he had heard M. Dupleix affirm that an Englishman had told him that 1,00,000 pagodas had been given to La Bourdonnais for the ransom. He added that he had done his best to ascertain the truth of the fact, but had been able to learn nothing.

The second, M. Kerjean, asserted, that he had heard a Jew, retired to Pondichery, affirm, that the English had given M. de La Bourdonnais 1,00,000 pagodas, as an acknowledgment of the good treatment they had received at his hands, and that he, the Jew, as his share of this payment, had been taxed at 7,000 pagodas, which amount he had not paid.

La Bourdonnais' reply to these assertions, was, in substance, that they emanated from two men, one the nephew, the other the son-in-law of Dupleix, that he had avoided the last farewell to the English Governor, because he heard that he intended to offer him a present; that had he received such a present, he would not have placed himself in the position of being obliged to restore it, by deferring the evacuation of Madras from October to January; that it was not probable that he would have been received with such distinction in London by two members of the Madras Council, if they had known,—as if it had been true, they must have known—that the ransom had been the result of a bribe.

Here the matter dropped for a time, it being considered that the charge had fallen through. It was revived, however, in 1772, by an English gentleman, Mr. Grose, who wrote an account of his voyage to, and residence in, the East Indies. He states as follows:—'The Governor and Council settled the 'price of the ransom with the French Commodore (La Bourdonnais) at '1,00,000 pagodas, or £421,666 sterling, *besides a very valuable present to* '*the Commodore, who was willing to* 'evacuate his conquest upon *these* '*terms*, and leave the English in full possession of their Presidency. *Grose's* '*East Indies, Vol.* II, *page* 29.'

In Mill's India, 5th edition, Vol. III, pages 37, 38, we have evidence to the same effect. Professor H. H. Wilson affirms that 'a letter to a 'proprietor of India Stock, published in 1750, by a person who was evidently 'concerned in the Government of Madras at the time, describes discussions 'which took place at home, in regard to the payment of certain bonds given 'by the Government of Madras to raise money to the extent of 1,00,000 'pagodas, which, it is intimated, were presented to the French Commander as 'the price of his moderation.'

Only a few years ago, a case was submitted to the opinion of Council, regarding the validity of these very bonds, and it is believed that documents proving their existence are still to be found in the India House. This fact was communicated to the writer by a leading member of the Indian Bench, who had himself seen the case, and who had no doubt of the authenticity of the documents on which it was drawn.

The balance of later evidence seems, therefore, to weigh strongly against La Bourdonnais.

received it. With the knowledge of this fact before us, the refusal of La Bourdonnais to entertain the statesman-like plans of Dupleix becomes at once intelligible. Knowing, as we know now, that of the three measures which he himself submitted to Dupleix, *viz.*, the occupation of Madras by the French, its destruction, and its ransom —that of the ransom was the only one which would bring him in material advantage, all the mystery that enveloped his conduct disappears. He stands robbed of much of his glory, of that bright halo of pure disinterestedness with which historians have sought to encircle him,—but he is at least an intelligible being. We can watch his acts now, morally certain that we have our eyes on the secret spring by which all those acts were directed.

But we would not be understood to assert that this was the sole motive which influenced him. We even conceive it possible that La Bourdonnais himself was not at all conscious of the effect thus produced upon his actions. Even great men are very often unconsciously acted upon. More especially was this likely to be the case with a man, who chafed so fretfully against superior control as did La Bourdonnais. Determined not to subordinate his will to the will of Dupleix, he may have been himself unaware of that secret influence, which, notwithstanding, most powerfully moved him. What is most probable is, that the two motives, powerfully assisting one another, so worked upon and mastered his reasoning powers, that he was but faintly, if at all, aware of the real moving and guiding power within him, but persuaded himself that he was influenced by considerations of duty,—the selfish and sordid views which lay at the root of his conduct being kept entirely out of sight. However that may be, we have in this place to judge of the man by his acts. And in looking at those acts, we cannot but take advantage to the full of any circumstances which tend to throw light on the motives that prompted them. Hitherto, no consideration has been paid to those motives. In the contest between Dupleix and La Bourdonnais, the former has been ruthlessly condemned,—condemned,—we are satisfied,—without a full and fair enquiry,—without having been heard by means of public documents, in his own defence. Yet, it is surely something in the question between them to enquire, whether there were any secret motives besides those that have been assigned, which might have tempted either of them to over-step his powers. In the case of Dupleix, we see the avowed reason,—the determination to root out the English at any cost from the Coromandel coast,—based upon the powers which as Governor General of French India, he believed himself to possess,—but we can find no trace of any other. He had no personal objects to gain by

refusing to ransom Madras. It appeared to him so plain that the restoration of that place involved two dangers,—hostility from the Nawab and renewed hostility from the English,—to Pondichery which might be defenceless: the reason of his conduct is, in fact, so plain, so apparent, that we search in vain for any secret motive, least of all, for any which might have been beneficial to his private fortunes.

But it is not so with La Bourdonnais. It is now clear that up to the 26th September, he had entered upon no positive engagements to ransom his conquest. It is, we think certain, that on that 26th, the terms were verbally agreed to with Governor Morse, one of those terms stipulating for a private present to himself of nearly £40,000;—that, receiving on the the same day convincing intimations from Pondichery, that Dupleix and the Superior Council would be no party to any scheme for a ransom, he suddenly resolved to break with them, to assert his own independent action. Is it too much to infer that the alarmed private interests stimulated, perhaps unconsciously, his jealous and easily roused ambition to a revolt against the better feelings of his nature?

To return to the narrative. We left La Bourdonnais on the evening of the 26th and on the morning of the 27th September, refusing to acknowledge the authority of the agents sent to co-operate with him by the Superior Council, sending to Pondichery for ratification a copy of the treaty of ransom, and yet,—strange inconsistency,—asserting his entire independence of the control of that Council.

But before this actually happened, some intimation that it was about to happen, had reached Pondichery. Amongst the officers of the besieging army,—the commandant, in fact, of the Pondichery contingent,—was M. Paradis, a Swiss by birth, in the French service, and a man of a bold, energetic, daring nature. He had previously been known to La Bourdonnais, and the latter had, even before his arrival at Pondichery, made a special application for his services. Placed in command of the Pondichery contingent, and second only on land to La Bourdonnais himself, he had behaved in a manner to give the greatest satisfaction to his chief, and, until the time of the capitulation, the relations between the two had been of the most cordial nature. On the 26th, we learn for the first time that some difference had arisen on some point connected with the command of the troops, and that Paradis had left Madras for Pondichery on the 23rd; armed with letters from La Bourdonnais for Dupleix. It seems probable that Paradis, from his position in the force, had been made acquainted with the nature of the negotiations that were

progressing at Madras, and that he had pointed out to the Superior Council that, unless they asserted their authority none would remain to them. The Council were probably influenced by these considerations when they sent M.M. Desprémesnil, Dulaurent, and Barthélemy to Madras. But on the 28th, they received the defiant letters of La Bourdonnais. They at once wrote to him a letter, in which they re-capitulated the arguments they had used against the restoration of the place to the English; told him that M. Desprémesnil, the second member of Council, and then at Madras, would be authorised to take over from him the command of the place, with the Pondichery contingent under him; and concluded with a formal protest against all the engagements he might contract without the knowledge and confirmation of the Superior Council. On the following day, Dupleix despatched to him a letter written with his own hand,—most touching, most entreating in its terms, conjuring him as a brother, as a friend, to give up all idea of ransoming the place, and to enter heartily into the designs he was nursing for the uprooting of the English. After dwelling upon the worthlessness of a ransom agreed to by prisoners, and adducing examples from history to prove, that conditions made under such circumstances had never been considered binding, he added: 'in the 'name of God; in the name of your children, of your wife, 'I conjure you to be persuaded of what I tell you. Finish as 'you have begun, and do not treat with an enemy who has no 'object but to reduce us to the most dire extremity. Such are 'the orders which the enemy's squadron executes wherever it is 'able. If it has not done more, it was because it could not do 'more. Providence has been kinder to us than to them. Let 'us then profit by our opportunity, for the glory of our 'monarch, and for the general interests of a nation which will 'regard you as its restorer in India. Heaven grant that I may 'succeed in persuading you, that I may convince you of the ne-'cessity of annulling a treaty which makes us lose in one moment 'all our advantages, the extent of which you will recognise 'immediately, if you will pay attention to my representations.'

Meanwhile, the three Councillors, M.M. Desprémesnil, Dulaurent and Barthélemy, finding their powers disavowed by La Bourdonnais, transmitted to him on the 27th, a formal protest against his usurpation of authority, as well as against the restoration of Madras to the English; they sent also to the various commandants of troops, copies of the King's orders conferring supreme authority in India upon Dupleix,—a step to which, they said, they had been driven by the measures adopted by M. de la Bourdonnais in opposition to the orders he had received from Pondi-

chery. On the 30th, the three Councillors made a second protest, and announced their intention to withdraw to St. Thomé, there to await further orders from Pondichery.

This was only the prelude to other and stronger measures. On the 2nd October, a Commission, composed of the Major General de Bury, M. Bruyère, the Procureur General, and M. Paradis, arrived at Madras, armed with powers to execute the orders with which they were entrusted by Dupleix, as representative of his Sovereign in the East Indies. They carried a declaration made by Dupleix on behalf of the King and the Company of the Indies, which they were instructed to read publicly at Madras, setting forth, amongst other terms, that the treaty of ransom had been made 'by the simple act, without lawful authority, of 'M. de la Bourdonnais, with prisoners who were unable to 'engage others on their account, especially in an affair of such 'importance; that it was null and void, and to be regarded 'as never having been executed.' A second declaration, issued by Dupleix, on behalf of the King, and carried by them, created a provincial Council of Fort St. George, 'to render jus-'tice in the name of the King, civil as well as criminal, to all 'the inhabitants present and to come.' Of this, M. Desprémesnil was appointed President, and M.M. Dulaurent, Barthélemy, Bonneau, Desforges, Bruyère, and Paradis, members. By another declaration, M. Desprémesnil was nominated Commandant and Director of the town and fort of Madras, 'to command 'in it, under our orders, the officers of land and sea forces, the 'inhabitants, the clerks of the Company, and all other French-'men and foreigners, established in it, of what condition soever 'they might be.' They carried with them, besides two requisitions, one from the Superior Council of Pondichery, the other from the principal inhabitants of the town, both alike protesting against the usurpation of authority on the part of La Bourdonnais, and against the restoration of Madras to the English, as a measure injurious to the national interest, and fraught with danger to Pondichery.

Early on the morning of the 2nd October, six of * the members of the newly appointed provincial and executive Councils, accompanied by their chief clerk, entered Madras, and proceeded to the head quarters of La Bourdonnais. By him they were received and conducted to the large hall. Here the business of the day was commenced by General de Bury handing over to La Bourdonnais a letter from the Superior Council, stating that

* They were, M.M. Desprémesnil, Dulaurent, Barthélemy, Bruyère, Paradis, and General de Bury.

he, the general, was authorized to reply to his letter of the 27th ultimo. The chief clerk then read out loud, in the presence of a large concourse of people, who were attracted by the rumours of some extraordinary scene, the several declarations and protests we have enumerated above.

Whilst this reading was going on, officers of all grades came crowding into the hall, the great majority of them belonging to the troops who had come with La Bourdonnais from the Isles. As soon as the clerk had finished, La Bourdonnais replied. He stated that he would recognize no authority in India as superior to his own; as the orders, which he had received from France, concluded with a special proviso, leaving him 'master of his operations.'* M. Desprémesnil replied, that the authority just quoted in no way invalidated the powers conferred upon the Governor General, and, in fact, bore no reference to the subject. La Bourdonnais, however, was obstinate, and seeing himself supported by a number of his own adherents, he assumed a haughtier tone, and threatened to beat the general, and get the troops under arms. Immediately a cry was raised in the assembly against taking up arms against one another. Upon this, La Bourdonnais assembled in the next room a Council of war, composed of the officers who had come with him from the islands, and after a short sitting, communicated the result to the deputies from Pondichery. This was, in effect, that they considered he ought not to go back from the promise he had given to the English. Upon this, the deputies retired.†

La Bourdonnais having thus repulsed the demands, legally preferred, of the Pondichery deputies, proceeded without delay to deprive them of every chance of executing them by force. Spreading a report that the English fleet had been seen off Pulicat, he issued a general order to send fifty men on board each vessel. He at the same time privately instructed his trusted subordinates to assign this duty to the troops of the Pondichery contingent. This was executed on the morning of the 4th

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* Undoubtedly this was the case, and this was recognized by the Council of Pondichery, when two months before they had pressed upon him the necessity of a decision regarding them. La Bourdonnais had then refused to act, unless the Council prescribed to him a positive course. It may be observed in addition, that the fact of his being master of his operations, while it left to him the choice of his ground, did not relieve him of subordination to the authority of the representative of his Sovereign, in territories subject to that Sovereign.

† There are two accounts of this interview,—one a *Procès Verbal* drawn up at the time by Desprémesnil and his colleagues; the other the account written three years afterwards by La Bourdonnais. The latter abounds with personal imputations which we have omitted.

October, and he found himself then at the head of troops entirely devoted to him, absolute master of his movements.

The members of the Provincial Council did not the less attempt to establish their lawful authority by legal means. Discovering during the day the ruse which La Bourdonnais had employed so well, apparently for his own interests, they resolved to place him under a moral restraint. For this purpose, General de Bury accompanied by M.M. Latour and Largi proceeded to his head quarters, and delivered to him a written document, addressed to him as Commandant of the French squadron, forbidding him to leave Madras with the French troops, without a written order from Dupleix. But the time had passed when it was necessary for La Bourdonnais to dissemble his resentment. He had rid himself of the Pondichery troops, and he was determined to use his usurped authority with the utmost rigour. He at once placed the three deputies under arrest, and when Paradis, hearing of this indignity, hastened to remonstrate with him, he charged him with being 'a marplot who had brought 'them all within two fingers of destruction,' and sent him to join his associates. He declared at the same time that he would leave them prisoners to the English on the 15th October,—the day on which he had covenanted to restore Madras to that nation.

We will not attempt to describe the feelings of Dupleix on receiving a report of these proceedings. To carry through the darling object of his policy, the destruction of the English power on the Carnatic, he had employed entreaty, advice, persuasion, menaces, and moral force,—and all in vain. The determined pertinacity of his rival left him stranded. Not a single resource remained to him. His authority denied, his soldiers sent on board the Admiral's ships, his deputies arrested and confined in Madras,—his entreaties answered by cold refusals, his assertions of authority by a contemptuous denial of it,—what remained for him to do? It was vain to appeal to Paris. Thence no reply could arrive within fifteen months, and La Bourdonnais could not stay fifteen days longer, without extreme risk, upon the coast. He was maddened, not only at the dissipation of the vast schemes which he had formed, but at his powerlessness to prevent any act which it might please the infuriated chief of the forces, naval and military, to carry out. The utmost that he could do was to protest. This he did, in a temperate and dignified letter,† so soon as intelligence of the proceedings at Madras reached him.

† *Dated Madras, 6th October, 1746. From the Superior Council of Pondichery to La Bourdonnais.* 'We learn by the letter of the Council of Madras of the 4th current, that you have caused to be arrested M.M. Bury,

Nor was La Bourdonnais himself at all at his ease. The month of October,—a month famous for the storms and hurricanes which it brings upon the open Coromandel coast,—was now well upon him. He had felt and had always declared that it would be dangerous to stay in the Madras roadstead after the 15th October. Yet, so intent had he been on this quarrel with Dupleix, that very little had been done in the way of embarking the property of which he had made prize. Not even an inventory had been make out. To leave Madras, too, on the 15th, as he had intended, with a treaty unratified by the Superior Council of Pondichery, would be to make over his conquest to Dupleix without conditions, and to lose for himself and for France the ransom-money he had been promised. That defiance of the Pondichery authorities which had apparently succeeded so well, what would it profit him, if, after his departure, those authorities should choose to ignore all his proceedings, and should deal with Madras as a conquest of which they alone had a right to dispose? And yet, what was more probable than that they would thus act? Relying upon the physical force which he disposed of, he had contemned their orders, refused to acknowledge their authority, arrested their Generals, and put them to open scorn. It would have been contrary to all his experience of men to imagine, that, the physical force being on their side, they would acknowledge any of the arrangements, which, in open defiance of their instructions, he might have made.

At the moment then of his apparent triumph, La Bourdonnais felt all the hopelessness and helplessness of his position. Unless he could come to terms with Dupleix, all his plans would be subverted, the bills for public ransom and private gratitude would not be worth the paper on which they were written. Yet, how to come to terms with those whom he had slighted and scorned, seemed of all tasks the most impossible. To bend his

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Paradis, Latour, Largi, and Changeac. Our former letters, and that which M. Bury intimated to you, would have informed you that the Pondichery contingent, not being under your orders, we had nominated a Commandant at Madras, and had established a Council there. Things being upon this footing, we might have demanded of you, by what right, and by what authority, you have caused them to be arrested. But we feel the inutility of such a demand. We can now take no part with reference to all that you may do, but to wait tranquilly the issue of your proceedings.

We confirm the order to the Council of Madras, to the officers and troops of Pondichery, not to evacuate Madras, and not to embark, on board the ships, at least, until you forcibly compel them. But we tell them, nevertheless, to obey all your orders for the performance of the garrison duties of the place. We permit ourselves to hope that a ray of light will induce you to reflect very seriously.'

haughty spirit to sue for the amity which, when pressed upon him 'as a brother, as a friend,' he had rejected, was a course which La Bourdonnais, of all men, would have scorned. Something, nevertheless, must be done. Dupleix could afford to wait for the future. It was from La Bourdonnais that the overtures must come.

He made them. Not, indeed, in that open, straightforward way, which would have acknowledged his error, and which would have caused the immediate renewal of cordial relations with Dupleix, but in that tortuous, indirect manner which those adopt, who, having committed an error, and finding that the consequences of that error are recoiling on themselves, are yet too much the slaves of a false pride to make a candid confession.

This was the plan he adopted. He commissioned Paradis, the Commandant of the Pondichery contingent, and whom, it will be remembered, he had placed in arrest, to sound Dupleix as to whether he would agree to the treaty of ransom, provided the restoration of Madras were deferred from October to January or February, with a view ostensibly, to make a proper division of the spoils. If he could agree to that, Paradis added, La Bourdonnais would leave behind 150 of his own troops to reinforce those of Pondichery.

This proposition came upon Dupleix just immediately after his authority had been insulted and defied, when he, the civil power, had had flaunted before him, by the chief military power, the irresistible argument of brute force. He had divined some, if not all, of the motives of La Bourdonnais, and he had made up his mind to keep no terms with him. Openly to break off all correspondence with one who wielded the physical force of the colony, would be however, in his opinion, conducive neither to French interests in general, nor to the interests of Pondichery in particular. But on receiving this indirect overture from Paradis, he saw in it a means of getting rid of one who refused to carry out himself, and who prevented others from carrying out, the views which he deemed essential to French interests. He resolved, therefore, to adopt that policy, which the weak in all age have deemed a legitimate weapon when battling against the strong, and to dissemble. He, accordingly, wrote on the 7th October to La Bourdonnais, stating that he would entertain the project. But on the following day, a circumstance occurred which immensely strengthened the hands of Dupleix. Three ships of war, long expected, the *Centaure* of 74 guns, the *Mars* of 56, and the *Brillant* of 50, having on board 1,520 men,* anchored

* Grose's' East Indies, Vol. 2, Chap. XXIX.

that morning in the Pondichery roadstead. They brought out startling intelligence. M. Orry had been, in December 1745, replaced as Controller-General by M. Machault d'Arnonville,—a member of the Council of State,—of no experience in finance, but devoted to Madame de Pompadeur. The Company informed Dupleix of this, as well as of the fact that war between France and Holland was imminent, and that he would, therefore, have to arrange to meet a new enemy in his neighbourhood They also forwarded to him, in anticipation of his being joined by La Bourdonnais, specific instructons as to the relations to himself, which the Commander of the French fleet would bear.

As this was the very point upon which La Bourdonnais had based his resistance to the orders of Dupleix, this document had naturally very great interest for the Pondichery Council. It was dated the 6th October, 1745, and was thus worded: 'The Com-'pany considers it right and proper that the Commander of the 'squadron should be present at the meetings of the Superior 'Council; that he be summoned to it when any military 'expedition, in which this Commander is to bear a principal part, 'is under consideration; and that he have in it a deliberative voice. 'But it requires also that the conclusion, which shall be arrived 'at after discussion, whatever be the nature of the affair, be carried 'out by him without opposition, even though it should concern 'the disposing of all the ships of the Company which he may 'command.' These orders appeared to Dupleix to be too clear to be disputed; he, therefore, sent a copy of them the same day to La Bourdonnais with the additional intimation, that they had been approved of by the new Minister.*

* The date of this letter,—the 6th October, 1745, a date exactly two months antecedent to the appointment of M. Machault as Controller-General,—together with the statement made by Dupleix that its contents 'had been approved by the new Minister,' afforded an opportunity to La Bourdonnais, of which he took full advantage, to contest its validity. 'How is it possible,' he observes in substance in his memoirs, 'that *the new Minister* should have sent M. Dupleix orders; dated the 6th 'October, when his appointment dates only from the 6th Decem-'ber, and I myself received by the same opportunity letters from M. 'Orry, the old Minister, dated the 25th November.' He proceeds on this, to speak of it as a 'pretended letter. But this reasoning, plausible as it is, has no foundation. It is perfectly true, that M. Machault's appointment as Controller-General dates only from the 6th December 1745, but it is no less so, that for several months prior to that date, he had been designated as the successor of Orry, who was in disgrace, and that he had been consulted on all the arrangements that were under discussison. Dupleix merely states in his letter that the orders he had received from the Company had been 'approved of' by the new Minister. What was more natural than that such important orders had been submitted, before transmission to a distant settlement, to the man who was virtually, though not actually, minister, and

But the shifts to which a wilful nature, working for a definite end, is able to resort, were not yet exhausted. La Bourdonnais, in his reply, thus referred to the instructions of the new Minister: 'With respect to the extract you have sent me, you may 'depend that I shall always conform to the orders of the Minister 'after I shall have received them. But he no longer writes to 'me here, and the extract you have sent me concerns the Com-'pany's captains and not me.'* He added that he had received but one letter from the Company, and begged Dupleix to have the

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who would be entrusted with their execution? That such was the practice is certain, and the very word used by Dupleix implies that the practice was carried out on this occasion. The very ships, which carried out the orders, sailed from France before the actual nomination of Machault; it would have been a transparent falsehood,—for which there was neither necessity nor excuse,—for Dupleix to have employed the expression which he did use, if it had not been founded upon fact. Of the authenticity of the order there can be no doubt. But there is another point. La Bourdonnais adds that the letter of Orry to him was a confirmation of his independent authority in the Indian seas, and he quotes two garbled extracts from it to prove this. We give here entire the two first paragraphs from which those extracts are taken, believing that they strongly confirm the view we are supporting. It must be remembered that the letter is addressed to La Bourdonnais, as Governor of the Isles of France and Bourbon, and that at the time it was despatched, Orry had not the smallest idea that La Bourdonnais would have been able to succeed, before its receipt, in fitting out a fleet for the Indies. He believed him, in fact, to be still at the Isle of France. The letter runs 'thus:—'The Company will send you this year, Sir, six of its vessels, of 'which five will sail at the beginning of next month, and the sixth in the 'course of February. It has determined to address them all to you, leaving you 'master, to dispose of them according to circumstances, and the news you 'may receive from the Indies. It ought, however, to be your chief duty to 'send to Pondichery, at a proper season, the number of vessels which may 'be necesssary to convey to it, in safety and with promptitude, the money 'and the troops, the ammunitions of war and the supplies, which are des-'tined for that settlement.

'I do not dictate to you the manner in which you ought to act, to succeed 'in this expedition, of which, you will yourself feel all the importance, 'persuaded as I am, that you will do all for the best. Your chief point of 'view ought to be the preservation of the town of Pondichery, and 'of the other establishments, which the Company possesses beyond the 'Cape of Good Hope and in India. This object ought to be preferred 'to all other enterprises. You should come to an understanding on 'this point with M. Dupleix, and should send him all the assistance 'he may demand of you, and for which he will look to you.'—*Dated 25th November*, 1745.

Now, this letter gives very large powers to the Governor of the Isles of France and Bourbon, but it in no way authorises that Governor to assume authority in the country of the Governor, for whom some of the assistance was intended. And yet that was the strained interpretation La Bourdonnais put upon it.

* *La Bourdonnais to Dupleix, dated Madras, 10th October*, 1746.

others sought for. This despatch had scarcely been sent off, when the missing letters arrived. Whether or not they contained any reference to the orders sent to Dupleix, it is impossible to say,* but this is certain, that from the date of their receipt, the tone of his letters changed. In that of the 10th, he announced to Dupleix that he would wait the receipt of his ideas till the 13th, and assured him that there was no condition he would refuse, if it did not involve the forfeiture of his word. The same evening, he received the reply of Dupleix to the overtures made through Paradis, and he at once transmitted to Dupleix the conditions on which he would make over Madras to the Pondichery authorities, and depart.

The principal of these conditions were, 1st, a promise, that the treaty he enclosed should be rigidly observed; that the Governor should be taken from his officers, and not from Pondichery; that Madras should be evacuated on the 1st January, 1747. The treaty contained articles very favourable to the English, especially when it is remembered that Madras, with its wretched garrison, was incapable of further defence when it surrendered. The second article provided that one-half of the munitions of war should be returned to the English; the fourth, that the residue of the supplies, of which the quantity was large, after the re-victualling of the French squadron, should be restored to them; the other articles related to the ransom and matters previously noticed. On the following day, the 12th, he sent another letter, in which he stated that as M. Desprémesnil had assured him that Dupleix would agree to the conditions, he was now impatient to depart. He enclosed five articles, the two principal of which provided that Madras should be evacuated, at the latest, at the end of January, that it should not be attacked by either nation before that period, and that as long as it should remain in the hands of the French, the roadstead should be accessible to the ships of both nations. The Superior Council replied to these letters on the 13th and 14th. With reference to the conditions insisted upon by La Bourdonnais, they agreed to keep the engagement entered into with the English, provided the English kept theirs; but they required that La Bourdonnais should leave them 150 of his troops as he had promised Paradis, that Desprémesnil should be Commandant, assisted by a Council of four, two of whom might be named by La Bourdonnais, subordinate to Pondichery; and that the place should not be evacuated till

* He writes in his letter of the 10th October to Dupleix thus;—'I have just received the letters of the Minister, they, in no way, affect my previous orders.' But the letters are not given.

a complete division of the prize property should have taken place. In their letter of the 14th,* the Council positively refused to agree to evacuate the place by the time proposed, and entered into reasons which shewed how dangerous it would be to French interests, to accede to the other conditions proposed. †

But before this letter reached La Bourdonnais, an unforeseen event had cut the more than Gordian knot which neither party could agree to untie. In his letter of the 11th October addressed to Dupleix, La Bourdonnais had remarked—'What we have most 'against us, is the monsoon; I can stay here very well till the '20th, perhaps, even to the 25th, if the weather continues favour-'able.' On the following day he wrote—'Already the northerly 'wind has set in, then follows, as you know, the decided necessity 'of quitting the place. * * * I am writing to-day to each 'captain, giving them such orders, that in case the new moon 'and bad weather should compel them to put to sea, they may 're-gain the coast afterwards.' The next day, the 13th, was a lovely day, one of the finest of the season. During the night, however, there came on one of those hurricanes which periodically cause ruin and devastation along the Coromandel coast. The French vessels, with the exception of three,—the *St. Louis*, the *Lys*, and the *Renommée*,—which had been sent to Pondichery with a portion of the spoils of Madras, were in the roadstead loading. In addition to their crews, they had on board nearly five hundred troops,—the Pondichery contingent, which, it will be recollected, La Bourdonnais, to assure his own unquestioned authority in Madras, had embarked upon them. The storm, as usual with us such storms,—gave but little warning of its approach. Before,

* In reply to La Bourdonnais' of the 12th.

† We extract the most salient passages from this letter of the Superior Council, dated Pondichery, 14th October, 1746, 'M. Dupleix has communicated 'to us your letter of the 12th, with some articles which we have examined 'very attentively. Many reasons prevent us from being able to accede to 'them. The time to which you limit the evacuation of the place, is not 'sufficient to enable us to make a division of the artillery, rigging, and 'the supplies, and to take them away. All that we can promise you, is to 'work as promptly as possible. * * *

'With respect to the hostages, letters of exchange, and bills, we are very 'willing to engage to receive them, on the understanding, that this acceptance 'on our part does not pass for an acquiescence in the articles which relate to 'them * * * The roadstead of Madras cannot be open to the English during 'the division of the prize property; the English squadron has only to 'come there with five or six ships from Europe, as well as from India, 'and to disembark their crews gradually. It would thus be very easy, 'as you will see, for the English to take possession of Madras, at least to 'concentrate there a force of 2,000 Europeans. It is for this reason that we 'have inserted a paragraph that the roadstead of Madras must not be open 'to the English.'

however, it attained anything like its greatest severity, the ships had all slipped their cables, and put to sea. All night long the hurricane raged with terrible fury. La Bourdonnais, who, at the first whistle of the storm, had busied himself in making preparations to meet every possible conjuncture of fortune, vainly strained his eyes, as the day slowly broke, to discover any trace of his fleet. Not a vessel was to be seen. The hurricane continued to rage furiously, and, at 8 o'clock in the morning, appeared to be even augmenting in force. During the whole of that day his anxieties increased. But he was not idle. Here, again, the old qualities of the great organiser of the islands displayed themselves to their full perfection. He sent parties along the coast, with means and appliances to succour the crews that might stand in need of aid. At Madras itself, he made preparations on a large scale for the same purpose; he wrote letters to Dupleix, detailing his terrible anxieties, and asking news of the ships at Pondichery; besides this, all the boats having been destroyed, he detached catamarans,* at ½ past 3 in the afternoon, when the storm had begun to abate, with letters detailing the state of things at Madras, and asking for information from any vessel they might fall in with. No intelligence reached him, however, before 8 o'clock, nor did a single sail appear in view. At that hour, he learned that the *Marie Gertrude*, an English prize, having many soldiers in her, had been lost with nearly all on board, between St. Thomé and Covelong; that one ship totally dismasted, and another, with all her masts standing, were anchored safely off St. Thomé; that a Dutch vessel had gone down near the same place, and that two small trading barks had met with a similar fate. All next day his anxiety was increasing; every hour brought bad tidings. At 9 o'clock, he learned that the *Bourbon* was at anchor fifteen miles off, with only a foremast standing, and leaking terribly; that the *Achille* was almost in the same state, and that another ship, name unknown, had been descried totally dismasted. Every hour brought news of fresh disasters. At 7 o'clock in the evening, he reported to Dupleix that the *Bourbon* was lost beyond redemption,† and that it would be possible to save only a very few of the crew; that the *Duc d' Orléans* was lost, one man only being saved, and that another vessel, totally dismasted, was in sight.

On the 16th, the weather moderated; but it was not till the 17th, that La Bourdonnais became acquainted with the entire extent

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* A catamaran is composed of three or four pieces of wood, about twenty feet long, tied together, upon which a man stands with a paddle.

† She was, however, eventually saved.

of his losses. Of the eight French vessels * anchored in the Madras roads on the evening of the 13th, the *Achille*, after incurring great danger, losing two of her masts, and throwing over sixteen 18 pounders, anchored safely in the roadstead; the *Neptune* had been totally dismasted, had thrown over fourteen 12 pounders, and had seven feet of water in her hold. All her prize-cargo had been ruined. The *Bourbon* was saved by a miracle: she had lost her main and mizen masts, and been compelled likewise to throw over fourteen of her guns. She had received in other respects such damage, as to make her quite unfit to put to sea. The *Phenix* was lost with all on board; the *Duc d'Orléans* underwent the same fate, eight only of her crew being saved; the *Princesse Marie* was dismasted, and had seven to eight feet water in her hold; the *Marie Gertrude* and the *Advice* had foundered. Of these eight vessels, then, four were lost; two of the others were rendered utterly unseaworthy, and the remaining two were so damaged, as to require almost super-human exertion to fit them for sea. The French fleet had, in fact, suddenly ceased to exist. The loss in men alone had exceeded twelve hundred.†

It was whilst in the midst of his troubles, before even he knew the full extent of his losses, that La Bourdonnais received that letter, dated the 14th October, from the Superior Council to which we have alluded,‡ and in which they declined to fix an absolute term to the time of the withdrawal of the French troops from Madras. He apparently had expected some such answer. 'I have received from the Council,' said he, in reply, 'the answer 'which I expected regarding the affair of Madras. I shall take 'that which I believe to be the simplest part, which is to leave 'you a copy of the capitulation, and to abandon to you the field, 'in order to devote myself entirely to saving the *débris* of our 'losses.' Four days later, writing when his losses were fully known to him, he still expressed himself hopefully about the future, proposing to winter and repair damages at Goa, whilst the undamaged portion of the fleet should remain at Acheen for the protection of Pondichery. He then added—'My part is taken

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* These were the *Achille*, the *Bourbon*, the *Phenix*, the *Neptune*, the *Duc d'Orléans*, fitted out as men-of-war, the *Princesse Marie*, an English prize, the *Marie Gertrude* and the *Advice*, also prizes.

† Besides sixty men of the English garrison who were on board the *Duc d'Orléans*. *Grose's East Indies.*

‡ *Vide* note to page 461.

'regarding Madras; I abandon it to you.* I have signed 'the capitulation, it is for you to keep my word. I am so 'disgusted with this wretched Madras, that I would give an 'arm never to have put foot in it. It has cost us too much.'

The next day he signed the treaty,—the same treaty which, on the 11th and 12th, he had forwarded to Pondichery, and to some articles of which, on the 14th, the Council of Pondichery had objected,—he signed this treaty, stating in the preamble, that he did so, because the Pondichery Council, by articles signed the 18th, and by that same letter of the 14th,† had engaged itself to hold to the capitulation in those terms.

Having thus concluded, by an act not only unauthorized, but under the circumstances, even dishonourable, that struggle for authority, and,—would that we could omit the remainder,—for his own private ends—for the securing to himself of the private sum which was additional to the public ransom,—La Bourdonnais assembled the members of the English Council, and reading to them the treaty in both languages, received their acceptance of its terms. Governor Morse and five of his ‡ Councillors then attached to it their signatures. The treaty was sent the same day to Pondichery, accompanied by an intimation from the Admiral to the Council, that he would hold them responsible, individually and collectively, for all contraventions perpetrated against it by the French.

Meanwhile, La Bourdonnais had made extraordinary exertions to repair and re-fit his vessels. Here he was in his real element. Nothing could surpass his energy, or the zeal and determination

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* It is necessary to notice that this was not written until La Bourdonnais had made a vain attempt to bring under his orders, the captains of the *Centaure*, the *Mars*, and the *Brillant*, just arrived from England. They pleaded, in reply, the orders they had received to place themselves at the disposal of the Governor-General and Council of Pondichery. *La Bourdonnais à Messieurs du Conseil Suprème de Pondichery, le 18th Octobre*, 1746.

† In a foot note to page 461, we have given the most important extracts from this letter. If the reader refer to it he will find, that so far from giving La Bourdonnais authority to accede to the terms mentioned, it distinctly objected to two of the most important conditions,—conditions, which, nevertheless, are found unaltered in the treaty which La Bourdonnais, on the stength, as he says, of this letter, signed. La Bourdonnais, in his memoirs, declares that the previous letters of Dupleix, agreeing in general terms to his conditions, authorized him to act thus;—but, why then, did he not quote these in the preamble?

‡ Mr. Grose, who was a contemporary, and who naturally adopted the English view, writes:—'If the French had not perfidiously broke their engagement, the price of the ransom would have been a very favourable circumstance to the English Company.' No doubt, and that is just why Dupleix opposed it, though he broke no engagement, having made none.

he instilled into his subordinates. In less than five days after the remnants of the shattered squadron had re-anchored in the Madras roads, he had succeeded in rigging the *Achille* with jurymasts; the *Neptune* and the *Princesse Marie* had been rendered seaworthy, and even the *Bourbon* had been patched up sufficiently to make the passage to Pondichery. Having placed what prize property he could on board these vessels, La Bourdonnais, on the morning of the 23rd October, ordered a grand parade of the troops, and formally made over command to Desprémesnil. As he did this, it came on again to blow, and the ships, fearful of another hurricane, at once made for the open sea. La Bourdonnais himself waited for the conclusion of the ceremony, then threw himself into a country boat, and amid a terrible storm put out to join them, thus bidding a last adieu, amid the conflict of the elements, to that Madras, with regard to which he 'would have given an arm never to have set foot in it.'

All, meanwhile, had been quiet at Pondichery. The storm of the night of the 13th and the two following days, had not extended so far south as the French capital. The three ships arrived from France, as well as the three which had been despatched from Madras some time previously to the storm, had thus ridden calmly in the Pondichery roads, whilst their consorts at Madras had been damaged or sunk. No sooner had these terrible losses become known, than the Council assembled to concert measures to be adopted to meet the possible results of such a calamity. Little, however, could be done, as the demands made on Pondichery for the expedition to Madras had exhausted all its stores, and the ships were not in a condition to take the sea immediately. On the 22nd, a Council was held, at which the captains of the ships assisted to deliberate on the disposal of the fleet. After hearing the opinions of the captains, a resolution was arrived that the six vessels, then off Pondichery, should proceed to the roadstead of Acheen, under M. Dordelin, the senior captain, there to remain till the 20th or 25th December, when the squadron should bear up for Pulicat, to proceed thence, if circumstances were favourable, to Madras. These orders were sent sealed to M. Dordelin. Neither Dordelin nor any of his junior captains appear to have been men of energy or character. The authority in whose presence they found themselves at the moment, acted upon them with a force, that to their feeble natures was irresistible. They had not been many hours at sea, when they received a letter from La Bourdonnais informing them of his departure from Madras, and directing them to proceed along the coast to join him. On opening at the same

time their sealed orders, their perplexity was extreme. It was difficult for them to decide to whom their obedience was due. Whilst yet hesitating they fell in with the maimed squadron of La Bourdonnais. His daring, decided spirit settled the question in a moment. Taking upon him the command of the united squadron, he ordered them to accompany him, as he continued his course for Pondichery. In that roadstead he anchored on the 27th.

Once more at Pondichery, the contestation between the two men re-commenced. It formed part of the plan of La Bourdonnais, and there can be no doubt that, as a plan, it was able and well considered, to have taken round the squadron to the Malabar coast. Leaving the sound vessels cruising in the Arabian Sea, he would have taken the damaged ships into the neutral harbour of Goa, and have there completely re-fitted them. Buying then other vessels at Goa and Surat, he would have re-united his squadron, and have come round with a force, sufficient to counterbalance the English force, to the Coromandel coast. But to carry out this plan, he required to draw upon all the resources of Pondichery.

He required to borrow from her all her soldiers, all her heavy guns, a great part of her ammunition, and the remainder of her all but exhausted stores. He demanded of Pondichery, in fact, to take upon herself all the risks which might possibly attend his cruise, remaining herself all the time open to the attacks of an enemy. The idea, however, quite mastered him for the moment, and he pressed it with all his earnestness upon Dupleix. 'Aid me,' he said, 'with the same zeal with which 'you aided me for the taking of Madras, and we shall be able 'not only to recover ourselves, but to gain fresh advantages.'

It is doubtful whether, even under any circumstances, the Governor of Pondichery would have felt himself justified in undertaking so great a risk, even with the prospect of gaining so great an advantage. Certain it is that, after the experience of the preceding four months, Dupleix felt no inclination to permit the safety of the colony to rest on the caprices of a man who, up to that time, had never ceased to thwart and oppose his best devised schemes. Considering that the squadron of Commodore Peyton was yet unconquered, he felt that it was absolutely necessary for the safety of Pondichery, that the bulk of the fleet should proceed to an anchoring ground, whence it would be re-called on an emergency. Such a position did Acheen, in the opinion of himself and his Council, offer. Although, therefore, the letters of La Bourdonnais making this proposal, were couched in the most conciliatory language; although in

them, Dupleix was urged to forget the past, and give once more, as he had given before the expedition to Madras, all the resources of Pondichery, in aid of the new scheme, he felt constrained to refuse to entertain it. The fact is, he could not forget the past; he could not forget the terrible trials of the preceding six weeks; the open defiance of his authority, the arrest of his agents, the disposal of the Pondichery contingent on board the ships of the squadron, the usurpation of an authority supported by physical force alone. These things, indeed, would have been very hard to forget at any time. Especially were they so at the moment when he, who had suffered most from such proceedings, had upon his shoulders the sole responsibility of the future of Pondichery. To have again voluntarily placed that settlement in the power of one who had shown no respect for the authority of its Governor, would have been the height of folly. The honied phrases of La Bourdonnais fell, therefore, upon ears which thoroughly mistrusted both them and their author. The Superior Council declined to entertain his plan for a moment. La Bourdonnais himself had refused to land; they declined to proceed on board his ship, as he requested, to discuss matters together. Neither party, in fact, would trust the other. Under these circumstances, it is scarcely to be wondered at, that the tenor of the reply to La Bourdonnais' proposition went simply to reiterate to orders, which had directed the squadron to proceed to Acheen.

In the first letter,* which La Bourdonnais addressed to the Superior Council after his junction with the squadron of M. Dordelin, he had promised that he would not interfere with their command over the Company's ships. This promise, on his new plan being rejected, he proceeded to fulfil. He had at his disposal seven vessels,—four in good order,† three damaged and shattered.‡ Of these he proposed to form two squadrons, which, sailing together, should endeavour to gain Acheen. If they succeeded, he would send thence the *Lys* and the *Sumatra* to the islands, and, repairing the *Achille*, would make, at the end of December, for Pulicat, then to carry out the orders of the Superior Council. But should he not be able to gain Acheen with the two squadrons, the first under the command of M. Dordelin was to make for that place, there to act under orders from

* *A Messieurs du Conseil du Pondichery, le 26th Octobre*, 1746.

† These were the *Centaure*, the *Brillant*, the *Mars*, and the *St. Louis*.

‡ The *Achille*, the *Lys*, and the *Sumatra*. The *Sumatra* had come in a shattered condition from the islands. The other ships, the *Bourbon*, the *Neptune*, the *Renommée* and the *Princesse Marie* had been too disabled to make the voyage.

Pondichery, whilst he himself, with the damaged squadron, should bear up for the islands.

Upon this plan he acted. On the 29th of October, after a stay in the Pondichery roads,—for he did not land in the town,—of only two days,— he set sail with the seven ships before indicated for Acheen. The result he had anticipated happened. The three damaged ships were soon left out of sight by those of the uninjured squadron. These latter sailing their best, as had been ordered, reached Acheen on the 6th December. La Bourdonnais, despairing of being able to gain that anchorage with ships that had been so shattered as his own, gave up all idea of reaching it, and bore up for Port Louis. He arrived there, his ships in a miserable condition, on the 10th December.

In this manner, after a short sojourn of four months, did La Bourdonnais leave those latitudes, to gain which had been the dream of his heart during the best years of his life. Yet, in those four months, what stirring events had been concentrated! Arriving in the Indian seas with a fleet which he had, for all the purposes of the expedition, made himself, with crews he had trained, and soldiers whom he had taught and drilled, he first encountered and beat off an English fleet, inferior, indeed, in the actual number of the ships, but far superior in weight of metal; then, re-fitting and re-arming at Pondichery, he sailed out to encounter once more the English squadron. Not daring to accept his challenge to an engagement, they fled before him, and he, having thus obtained the mastery of the seas, sailed then to attack the stronghold of the English on the Coromandel coast. Taking it without the loss of a man, he heard very soon afterwards of the arrival of a reinforcement of three ships, armed as ships of war, at Pondichery! What a position did that give him! Conqueror of Madras, master of the ocean, with no one to oppose his onward progress, with a Governor General at Pondichery who was constantly impressing upon him the necessity of rooting out the English from every settlement in India, he might have sailed up the Hooghly, have conquered Calcutta, and have destroyed English commerce in the Indian seas. In acting thus, he would have fulfilled the very purpose of his mission; he would have carried out the most cherished dreams of his life. Why, then, did he not effect this? The answer is to be found in the motives which we have unveiled. It was partly, we believe, chiefly, because though he had triumphed over difficulties, such as would have baffled most men, though he had conquered enemies on shore, and driven every rival from the sea, he had not overcome himself.

Yet, there was another reason too, which it is impossible to ignore. The price of the ransom-treaty of Madras, even if it had no acknowledged influence on his conduct, stimulated, nevertheless, by its demoralizing power, that spirit of rebellious pride, which led him first to oppose every order which would have set aside the treaty that he had concluded, and afterwards to assume a position, as defiant as it was unbecoming, as baneful to the interests of France, as it was prejudicial to his own character.

And yet, it is not France that has the right to pronounce upon him severe judgment. Left by France to himself, he had civilized for her one great island in the Indian Ocean, and, making resources for himself, had done what none other of her sons has ever succeeded in doing,—had subdued the chief settlement of her great rival. Even that great fault,—great inasmuch as it led to greater,—the acceptance of a present as the price of the treaty of ransom, was, after all, but a compliance with customs that were common enough in India, and which, in one shape or other, few commanders of that age, whether they came from England, from France, or from Hindostan, were virtuous enough to resist. If, then, the recollection of the struggles, partly the consequence of this fault, for supreme power with Dupleix, cannot entirely be obliterated, we may at least prefer to dwell on the great triumph we have alluded to,—on the unsurpassed energy, daring, and strength of will, by which alone it could have been achieved!

He has now, at the epoch of which we are writing, gazed for the last time on the scene of his triumphs. No more was he to be called upon to strike a blow for French India. Arriving in the Isle of France, in the beginning of December, he found a successor, M. David, installed there, with orders to leave to La Bourdonnais the command of the fleet, only in case he found the accounts of his Government in proper order.

M. David having pronounced favourably in this respect, La Bourdonnais was placed in command of the squadron, and directed to proceed to France, taking Martinique on the way. A storm shattered his ships off the Cape of Good Hope, but he succeeded, with four of them, in gaining Martinique. Here he learned that the homeward route was barred by English cruisers, whom it would be impossible to avoid, and who were too numerous to contend against. Impatient, however, to arrive in France to justify himself, he proceeded under a feigned name to St. Eustache, converted all his property into jewels,*

* Madame de La Bourdonnais embarked in a Portuguese ship with most of these jewels, and arrived safely in Lisbon; thence she proceeded to Paris.

and took a passage in a Dutch ship. War, however, had been declared between England and Holland, and the Dutch vessel was taken, and carried into an English port. Here La Bourdonnais was recognised, and was at once constituted prisoner of war.

His reception in London, whither he was taken, was, however, most flattering to him. Regarded as the champion of English interests in India,—a poor compliment to a French admiral,—testimonies of esteem and regard were showered upon him. He was at once allowed his freedom and permission to return to France on parole, and he was treated by the Royal family, the Directors of the East India Company, and others, with the greatest distinction. Hearing, however, that his own Government and the Directors were incensed against him, he resolved to proceed without delay to France.

La Bourdonnais left London on the 22nd February, 1748, and, in a few days, found himself at Versailles. Here, however, a very different reception awaited him. Louis XV, king of France, in the very height of his sensual career, had no thought but for the gratification of his palled and jaded appetites. The reigning favourite, Jeanne Antoinette Poisson, Madame d'Etioles, the supposed daughter of a clerk in a mercantile house, created by the King, Marquise de Pompadour, held in her hands the whole direction of affairs. Such was the destiny of the France of Louis XV, that the fate of her armies, the fame and fortune of her generals and admirals, the prosperity of her citizens, depended on the absolute voice of one shameless woman. Caring only for power, she maintained her influence over the king by ministering, by means of others, to his debaucheries, whilst he signed the decrees that she had ordered to be prepared. The ministers were her creatures. Orry, whom she had disgraced, and who had died the previous year, had been succeeded, as we have already seen, by Machault, a man of little experience, as Controller-General of Finances, whilst the Chief Directorship of the Navy had been conferred upon Le Normand de Tournehem, a subordinate in the Revenue Department, and the reputed father of the favourite.

Under such a regime justice was not even thought of. It being the object of Madame de Pompadour to consolidate her own power, she cared only for those whose wealth and influence could be useful to her. In her hatred, she was vindictive and remorseless. Many a man expiated a trifling wound to her vanity, or a thoughtless sarcasm on her position, by a life of imprisonment in the Bastille. She possessed a cold and

callous heart, utterly incapable of sympathy or feeling. The selfish and animal nature of the King she knew thoroughly, and she managed him with an art that brought him quite under her control. Not that he loved her. Love was a feeling of which Louis XV was incapable. Cold-blooded, indeed, must have been the man who, as the remains of the woman with whom and under whose influence he had lived for nineteen years, were being carried in a drizzling rain to the grave, could jocularly remark—'The marchioness has bad weather for her journey.' Yet over that cold selfish nature she possessed complete mastery. Though he was often aware, and disapproved of, the tendency of her projects, he never had sufficient energy even to remonstrate against them. She provided him with debauchery in the *Parc aux Cerfs*, and he left to her unlimited and unfettered action.

Such were the rulers of the France to which La Bourdonnais returned, proposing first to clear his character, and secondly, to suggest new operations for the extensions of French territory. But he returned to a France which was not even the France of Fleury, nerveless and palsied as he had considered that to be. The France of 1748 used the spasmodic vitality she possessed chiefly against her own children. La Bourdonnais arrived to find himself the object of the most serious accusations,—accusations which the office-holders who registered the decrees of Madame de Pompadour regarded as fully proved by the fact that they had been preferred. He was accused of having disregarded the King's orders, of having entered into a secret understanding with the enemy, and of having diverted to his own use the funds of the Company. No explanation was listened to, or rather all means of explanation were denied to him. He was thrown into the Bastille. Permission to see his wife and children was denied him. Paper and ink were withheld from him, and this great soldier, whose active spirit had found the outer world not too wide for its conceptions, was shut up for three years in a narrow cell, whilst the charges against him were examined, according to the tedious forms of the period, before a Commission. But the spirit of La Bourdonnais could not be idle even in a prison. He devised means to write his memoirs. Handkerchiefs steeped in rice-water served him for paper, coffee dregs for ink, and he made a pen out of a piece of copper money, which he flattened out, rolled up, and pointed. At the end of three years, the Commission solemnly declared his innocence, and the gates of the Bastille were opened to him. But it was then too late. Paralysis of one side had resulted from his long confinement

and his general health had been undermined. His affairs, too compulsorily neglected, were in a state of disorder. Indignation at such a reward for his services increased the malady which confinement had induced. It had, in fact, broken his heart. His release, therefore, brought him but little benefit. A few months later, the 9th September 1753, he died, the first Franco-Indian victim,—the first out of others who were to follow,—to the misgovernment of Louis XV.

But it may be objected that a man who could act as we have described La Bourdonnais to have acted, can scarcely with propriety be styled 'a victim,'—that he who could make the honour and glory of his country, second to his own interests and his own ambition, more deserved the designation and punishment of traitor, than merited commiseration. Undoubtedly that might have been so, had his contemporaries enjoyed the same opportunity that we have of prying into the inner heart of the man, of searching out his secret motives. But, in considering the conduct of France towards La Bourdonnais, we must always recollect that the charge which in these days is considered the gravest against him, *viz.*, that of receiving a bribe to agree to the ransom of Madras, was but lightly pressed, was supported by no proof, and was never believed. He stood before his countrymen, as a man who had sacrificed his every energy to promote the glory of France, and who had failed in consequence of the jealousy of others. It was that failure, no matter how brought about, which constituted his real crime in the eyes of the palsied administration of Louis XV. A Government, such as that was, cares for nothing, looks at nothing, but results. Its administrators may have been culpably careless themselves, they may have neglected every necessary provision for success, they may even, by their incapacity, have made success impossible, but, notwithstanding, they do not the less force the responsibility of the result on the man whom they employ. They save themselves by making of him a victim.

As to the fault itself, nothing is further from our intention than to attempt to excuse or to extenuate it. Yet, in justice to La Bourdonnais, it must be recorded that the fault was less his, than of the age in which he lived. Whilst we lament his weakness in this respect, let us remember how few of our own early Indian administrators were clean-handed. After reading the account of the vast sums paid to the conqueror of Plassey by Meer Jaffier for his elevation, of the bribes then offered by Meer Kassim, and accepted by the members of Council to dethrone that same Meer Jaffier in favour of himself, and then, of the presents in hard coin paid by Meer Jaffier for his restoration, we

may then be disposed to judge La Bourdonnais by the more lenient code that obtained in the earlier period of British conquest of India, and, if we cannot acquit him entirely, we must at least be forced to the admission, that there were few men in that age who would have been proof against a similar temptation.

It is our own belief, founded upon a diligent study of all the papers that have been written on this question, of the accusations and retorts, the charges and the defence, that whilst La Bourdonnais accepted the bonds for the amount intended as a private present to himself, he was not, consciously to himself, influenced by their receipt. The fact is, he was naturally disposed to rebel against authority on the spot superior to his own. The orders he had received from France gave a colour to the view, upon which he insisted, that he was supreme everywhere, except within the walls of Pondichery and its dependencies, and, in his impatience under restraint, he would read those orders only in the light most favourable to his own wishes. We do not doubt that the money consideration really helped to drive him on in the course which led to an open breach with the civil power. But his mind was so full of the consciousness of his own dignity, he chafed so much against orders, he had become so blind to what ought to have been to him the simple line of duty, and so bent on asserting his own rights, that we can well believe he would himself have repelled with sincere indignation the charge that he was really fighting to secure a bribe. We have had instances in our own day of the strange forgetfulness of propriety that can be displayed by men, who, in other points, might claim to be regarded as great men, when they are baulked in the course they have planned out for themselves. It matters little what is the cause, but the fact is undeniable, that when once a man gives himself to the sway of his passions, he is like a steed without a rider. The greater his capacities, the more headlong, the more dangerous will be his course. His manly sense of honour, his chivalry of nature, leave him as if by order. He stoops to acts which he would scorn in others, which, in the possession of his right senses, he would scorn in himself. He looks only at the end. Reckless as to the means, he presses into his service the meannesses which come readily at his call, blinding his eyes to their nature. Happy the man, to whom a sudden revelation discloses the abyss upon the brink of which he is acting, whom a knowledge of the means he is employing recalls, before it be too late, to himself! To La Bourdonnais, alas! no such perception of danger was granted, and, in his struggle for power, he lost, by his

protracted stay at Madras, the best chance of completing the work of François Martin.

Meanwhile, his rival remains at Pondichery, master of Madras, master even, for the moment, of the seas. His policy has triumphed, but yet dangers seem to be rising upon two sides of him.

On the one side, England, alarmed at the loss of Madras, is making super-human efforts to retaliate on Pondichery. On the other, the Nawab of the Carnatic, jealous of French aggrandisement, is demanding with eager messages the surrender to himself of Madras, the renunciation of further designs of conquest, and threatening hostilities in case of refusal. In our next number will be recorded the consummate skill by which Pondichery was preserved, Madras retained, and which planned the first direct blow for a French Empire in India.

SHORT NOTICES.

The Panjab Chiefs, Historical and Biographical notices of the principal families in the territories under the Panjab Government. By Lepel. H. Griffin, Bengal Civil Service, Assistant Commissioner, Lahore. Lahore: T. C. M'Carthy, Chronicle Press, 1865.

IN the very short space which we are able to afford in this number to the notice of this valuable work, we do not pretend to be able to give anything like a full review of its contents. That we reserve to a future occasion. But it is impossible to allow the present number of the *Review* to appear without containing our testimony to the great care with which these historical and biographical notices have been compiled, and to their value alike to the reader and to the historian. The portion that has been published relates only to the Chiefs of the plain country between the Beas and the Indus, but it constitutes, in reality, a minute and detailed history of the political occurrences that have taken place under Sikh rule. 'The intention of the work,' we are told in the preface, 'has been to give a picture of the 'Punjab aristocracy as it exists at the present day. No mention 'has, accordingly, been made of many families, Hindu and Muham-'medan, once powerful and wealthy, which fell before the 'Sikhs. No mention has been made of many old Sikh families 'whose jaghires were seized by Maharaja Runjit Singh, and 'whose descendants are now plain husbandmen. A few notices 'of tribes and families of no present importance, have, for special 'reasons, been given; but, as a general rule, only the his-'tories of those men have been written who possess, at the 'present time, rank, wealth, or local influence.'

It can easily be imagined how important a work, compiled upon such a plan, must prove to the future historian, provided only that sufficient care have been taken to ensure accuracy in the details. The proofs are abundant that this has been an object of which Mr. Griffin has never lost sight. Every biography has been sifted in the most careful manner, and with a discrimination which betokens the possession of a clear head and cool judgment. It is this, in fact, which makes the work so valuable. Any one could have made a compilation, but only

a man of judgment and ability could have compiled the book we are noticing. We do not hesitate to state that it ranks next to Mr. Aitchison's valuable work among the additions that have been made, during the present century, to Indian history.

On the various narratives, which make up the work, we will not now dwell. We have not space enough to refer to all, and it would be tantalizing to select only one or two. We would wish, however, to say one word about the style. And here again we have only to praise. Everything is set before the reader, in a manner, so clear and forcible, that it is impossible for the most ignorant of Oriental names to lose his way. There is no circumlocution, no heavy involved sentences; the relative pronoun, 'which,' is never allowed to thrust himself forward unnecessarily, and there is, what is of equal importance, an entire absence of mere pretentious verbiage.

We regard this work of the more importance, considering the body to which the writer belongs. He is one of that class who may be regarded, with reference to their official duties, as the rising hope of the country, and, in another point of view, as the mainstay of Anglo-Indian literature. It is no secret that to the young members of the Civil Service this *Review* is mainly indebted for its continued existence, and it is, we think, one of the most hopeful signs of the time to notice the contribution made to literature, whether in the shape of exhaustive articles on controverted subjects, or in works of greater pretensions, such as those published by Mr. Aitchison and Mr. Griffin, by men who will, if they live, occupy, in the course of a few years, the highest places in the land. We rejoice to observe too, that this employment of time, not strictly official, is fostered by the various Governments of the country. Mr. Aitchison brought out his valuable work under the auspices of the Government of India, and Mr. Lepel Griffin informs us that his history of the Punjab Chiefs has been written by desire of the late Lieutenant-Governor of the Punjab. Whatever adds to the knowledge of the administrative officers of the country, must conduce likewise to their usefulness,—to their fitness for high employment. It is well known that the greatest statesmen who ever governed England, and the greatest orators who ever adorned Parliament, that Bolingbroke and Burke, Canning and Macaulay, Brougham and Shiel, gained their spurs by contributions to the periodical literature of the day, and that, even in our own time, the youthful aspirants of the Tories write up the policy of the party in the *Quarterly*, whilst their rivals disport themselves in the 'Blue and Yellow.' It is something that a similar system is gradually obtaining

in this country; that literary ability is looked for and rewarded; that an eye is kept on the writers of good articles with a view to their employment in the higher offices of the public service: and, above all, that there are men, who, caring little for this, are willing, in the interests of the country, to devote their leisure hours to the examination of questions greatly affecting the welfare of the people.

Of Mr. Griffin's work we will only say, in conclusion, that it constitutes a necessary addition to the the library of every Anglo-Indian, who may care to obtain a real insight into the history of a province so important, and so full of interest, as the Punjab.

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2. *From Cadet to Colonel, the Record of a life of active Service.* By Major General Sir Thomas Seaton, K. C. B. In two volumes. London, Hurst and Blackett, Publishers, 13, Great Marlborough Street, 1866.

We wish every Indian officer of repute would follow the example of Sir Thomas Seaton, and give the world some record of his adventures. If no two men are able to describe alike the events they have witnessed side by side in battle, there must be something to be learned from a perusal of the impressions which have been conveyed to the minds of different able men in their contest in the greatest battle of all. Life in India, indeed, presents endless varieties. To some men it is comparatively uneventful; others, on the contrary, undergo a constant, and apparently never-ending, succession of adventures. Such was the case with Sir Thomas Seaton. Coming out, without much preparation, the first of his family, to this country, he was present at the siege and capture of Bhurtpore in 1826, took a part in the Affghanistan expedition, and in the subsequent occupation of that country, served with his regiment, the late 35th L. I., throughout the terrible events of 1841, fighting his way with Sale's Brigade to Jellalabad. The story of the occupation of that place is one of the best parts of the book. It shows the resources of soldiers under all sorts of privations and difficulties. Sir Thomas Seaton tells us with *a gusto*, which neither time nor age have lessened, of the stratagems used to capture the flocks of sheep, which Mahomed Akbar was in the habit of driving within tempting distance, in order to decoy the garrison to their destruction; how, when spirits failed, he set up a still of his own, and produced a concoction which was pronounced admirable. To the dogged bulldog courage of Sale, and to the lofty energetic spirit of Havelock, whom

he regards as the inspirer of all the best measure taken of that gallant defence, Sir Thomas does ample justice. Some of his descriptions are rather startling,—that, for instance, of the great earthquake, especially so. Imagine such a scene as this: 'a little after eleven o'clock, there was a smart shock 'of an earthquake, accompanied by a rumbling noise. As the 'motion, however, at first was slight, I did not take much 'notice of it, but when, almost in an instant, the rumbling 'increased and swelled to the loudest thunder, as if a thousand 'heavy waggons were driven at speed over a rough pavement, 'I turned quite sick, and an awful fear came over me. The 'ground heaved and set like the sea, and the whole plain 'appeared rolling in waves towards us. The motion was so 'violent that I was nearly thrown down, and expected every 'moment to see the whole town swallowed up. Of course, 'the effects were awful;—the houses, the walls, and the bastions 'were rocking and reeling in a most terrific manner, and falling 'into complete ruin, while all along the south and west faces, the 'parapets which had cost us so much labour, and had been erect-'ed with so much toil, were crumbling away like sand. The whole 'part was enveloped in one immense impenetrable cloud of 'dust, out of which came cries of alarm and terror from the 'hundreds within. When the dreadful noise and quaking 'ceased, a dead silence succeeded, all being so deeply impressed 'by the terror of the scene, that they could not utter a word. 'The men were absolutely green with fear, and I felt myself 'that I was deadly pale.' It must, indeed, have been an appalling spectacle, far more terrible than the attacks of the Affghans. A few weeks after this, Akbar came with his army, and laid siege to the all but dismantled town. Then followed that famous sortie which dispersed the Affghan army, and enabled the garrison to await with a sort of contemptuous impatience the relieving force of General Pollock.

In the course of Sir T. Seaton's reminiscences we find many practical remarks, which are not unworthy of consideration even in the present day. He is especially severe against Lord William Bentinck's half batta order, and against the policy which abolished flogging in the native army. He animadverts likewise most justly on the little authority formerly allowed to commanding officers. 'Each successive Commander-in-Chief' he says, 'curtailed the power of a commanding officer until 'it was reduced to a mere shadow, and as for captains command-'ing companies they were mere nonentities, and were treated 'by the sepoys accordingly. A commanding officer could not 'recommend for promotion to the commissioned grade any

'havildar out of his turn, whatever might be the man's merits; 'neither could he pass over, except for positive bad conduct, 'any havildar who was senior of his grade. He might be dirty, 'slovenly, litigious, the greatest dolt alive, no matter, he was 'sure to be promoted, provided there was no more serious 'charge against him, and he was senior of his rank! Then, by 'order of Sir William Gomm, any man to whom punishment 'had been awarded by his commanding officer might appeal 'against it to a court-martial,—a measure which put the finish-'ing stroke to all semblance of power in regimental officers.' These remarks are most just, and we entirely concur with Sir T. Seaton in thinking that this injudicious interference paved the way to the great outbreak of 1857. The sepoy, beginning to despise his own officers, ended by contemning the Government of which they were the fettered representatives.

In the close of the second volume, we have the author's account of his own adventures in the mutiny; of his taking the late 60th Native Infantry when in a half mutinous state from Umballa to Rohtuck, at the imminent risk of his life; of the rare tact by which he defeated all the machinations against him; of his part in the siege of Delhi: and, finally, of his operations after the siege at the head of one of the columns into which the force was divided. All these events are told in a dashing and off-hand manner, without any attempt at graces in diction or style, and constitute light and pleasant reading. The whole work is, indeed, the simple record of an adventurous career, interspersed with practical reflections on matters which have come within the cognizance of the writer. As such we recommend it to our military readers. The author is an honourable man and a good soldier, and we are confident that those of his friends who still remain in India will feel a sincere pleasure in meeting him on this new field.

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3. *Memories of Merton, by John Bruce Norton.* Madras, J. Higginbotham, Mount Road, 1865.

A late number of the *Saturday Review* affirms that there is this great advantage about modern poems that they are generally short. Mr. Norton's book is no exception to this rule. In the Memories of Merton, he has presented to the public a collection of two hundred and seventy-three sonnets on all imaginable subjects, and all of the same length. In his preface, Mr. Norton enters into a disquistion on the origin of the word sonnet, to prove that fourteen lines is the proper limit for poems of that nature, and he then proceeds to point out the inherent difficultes of that species of composition. 'The occurrence is not frequent,' he says, 'of

'thoughts capable of being justly expressed in precisely fourteen 'lines, neither less nor more: for there must not be, on the 'one hand, any of what is technically termed *padding*, to eke out a 'meagre and scanty idea; nor, on the other, any obscurity or 'crabbedness, from an effort at brevity and compression. The 'sonnet, like a drama, should be complete in itself; and 'should flow on naturally, or at least with that art, which, in 'concealing its working, so successfully imitates Nature, that 'it is said to be the perfection of art.' If this canon be correct, it follows that the perfect sonnet is the most perfect form of the poetical composition, or to use the language of Boileau, quoted by Mr. Norton, 'un sonnet sans defaut vaut seul un long poem.' To enter upon such a task, therefore, implies either considerable confidence on the part of the author in his own powers, or a poetic impulse which knows no restraint.

On the general subject of sonnets, we would at the outset offer an opinion, which may prevent the admirers of that kind of poetry from reading further. We do not care for them. They often please the fancy, but they never touch the heart. If a sonnet of fourteen lines is a miniature poem in itself, its proportions must necessarily be dwarfed. There never can be in them that vivid painting, that roll of grand and stirring thoughts which in longer poems excites the imaginations and touches the soul. They can never be more than 'pretty.' We are well aware that we lay ourselves open to retort in promulgating such heretical notions, that the names of Shakespeare, of Petrarch, of Dante, of Camoens, and Milton, will be quoted to prove our want of perception of true poetry. It may be so. Other languages may be better adapted to the sonnet than English. But on that question, if we are in a minority, we are at least in good company. There must be something in an opinion that could enlist on its behalf advocates of two such opposite principles as Dr. Johnson and Lord Byron.

Judging in this sense, and regarding the epithet 'pretty' as the highest praise which an English sonnet is capable of attaining, we are very ready to admit that Mr. Norton has produced a successful book. His sonnets shew at all events a vivid appreciation of those finer feelings which long mixing with the world so often deadens and causes to decay. They display a mind sensible to pure and lofty ideas, and a power of expressing those ideas in refined and elegant versification. Admirers of sonnets will, we doubt not, find in this volume rich enjoyment. If we do not belong to that category, we can at least affirm from a perusal of its contents, that we should hail with pleasure any attempt made by Mr. Norton at a bolder versification.

4. *Five hundred questions on the Social Condition of the Natives of India by the Rev. J. Long, of Calcutta. (A paper read before the Royal Asiatic Society.)* London, Trübner and Co., 60, Paternoster Row, 1865.

We have no hesitation in asserting that a copy of this little pamphlet ought to be in the hands of every European in India, and that, in their intercourse with the natives, it should be the constant endeavour of all to frame answers to the several queries contained in it. Those queries are most suggestive, embracing subjects of every kind calculated throw light on the people and the country. Not even a well-informed man can read them without being sensible of his own deficiencies, of the immense amount he has to learn in this respect. There are thirty-nine general subjects of which the following are the several headings:—1. Aborigines. 2. Agricultural classes. 3. Astrology and Witchcraft. 4. Beggars and Vagrants. 5. Calcutta. 6. Ceremonies, Rites. 7. Classes. 8. Commerce. 9. Conversation and Social Intercourse. 10. Criminal or dangerous classes. 11. Debating Societies. 12. Diseases. 13. Doctors. 14. Domestic. 15. Dramas—*Jatras*. 16. Dress. 17. Drinking habits. 18. Education in its social bearing. 19. Females. 20. Festivals. 21. Fishermen and Boatmen. 22. Food. 23. Houses. 24. *Keranis* or Native Clerks. 25. Language. 26. Language and Social State. 27. Marriages. 28. Miscellaneous. 29. Musulmans 30. The Native Press. 31. Pundits. 32. Proverbs. 33 Readers. 34. Recreations—Music. 35. Sects. 36. Servants. 37. Travelling 38. Vehicles. 39. Working classes.

It will thus be seen that every subject embracing the social life of the people has been taken up, and when we add that the questions on all these subjects are searching and exhaustive, we shall readily admit the conclusion, that the man who might be capable of answering all of them, would be able to write a complete history of the domestic life of the inhabitants of Hindustan. It is not to be expected however, that any one should be able to give an immediate answer to all these queries. Nor is that, as we understand it, the main object of the work. It is intended, we should imagine, to be rather suggestive. Let a man take up for instance the 18th subject, *viz.*, Education. On this, he will find twenty questions, all the answers to which are obtainable by a little study, and which when obtained, will give a complete illustration of the bearing of education on the social life of the natives. Now, the manner in which these questions are suggestive, is obvious. The 7th question, for example, enquires how far mental ignorance is productive of moral depravity.

The answer to this would show the exact influence exercised by education in checking moral depravity. Again, the 9th question, *viz.*, is intemperance greater in proportion among the educated or uneducated classes,—would certainly suggest, as a part of the answer, that whilst the effect of education upon some classes has been to cause them to abjure their own superstitions, it has imbued a proportion of them with an uncontrollable passion for indulgence in European vices, and the mind would then be brought to consider the best means to be adopted to avoid such a result. But that is only one subject. There is none that is not pregnant with matter regarding which information is desirable. Mr. Long asks for the co-operation of the various classes of the community in obtaining answers to the queries propounded,—not only with the, as it appears to us, secondary view, of getting the information, but in order mainly to render more close the bond between the two nations. Thus he points out how Collectors, Magistrates, and Commissioners, 'would find the 'enquiry profitable to themselves, in promoting good feeling 'between them and the natives, deepening their interest in the 'country, and occasionally relieving the *tedium* of a solitary 'hour;' how European settlers 'would find these questions 'of use in gaining a better acquaintance with the social condi-'tion of the natives with whom they are thrown so much in 'contact; it would show them that natives can talk and think 'of other subjects besides rupees, while on the other hand, the 'natives would see that the *Sahibs* are not mere indigo, tea, and 'coffee producing machines, but take an interest in the welfare 'and condition of their dependents,—thus the asperities arising 'from antagonism of race would be softened.' Similarily, principals and teachers in schools and colleges, missionaries, students of the vernacular, and travellers, would, Mr. Long shows, gain great advantage from a careful study of these questions and their answers.

We entirely concur. The book should be in every one's possession. It is one of the best we have seen for a long time, and we are certain that the amount of good it is likely to effect is beyond calculation. Now is the time for those who really have the cause of the people at heart to aid Mr. Long in his zealous exertions. We are sorry to notice, that in this respect, there seems a lull in European society. There is an absence of a common ground of assembly between natives and Europeans. Would it not be possible to devise an institution affording greater opportunities for the interchange of intellectual ideas than the late Union Club, and at the same time as liberal in its plan?

5. *Memorials of service in India. From the Correspondence of the late Major Samuel Charters Macpherson, C. B. Political Agent at Gowalior during the mutiny, and formerly employed in the suppression of human sacrifices in Orissa.* Edited by his brother, William Macpherson. With portrait and illustrations. London; John Murray, Albewaile Street, 1865.

Mr. Macpherson has written a very readable book. The greater portion is devoted to the successful suppression of human sacrifices in Orissa, by his brother, between the years 1842 and 1847. In this respect, the mild and pacific measures adopted by Major Macpherson have been completely successful, and the subject would probably have not been treated at so great a length, but for the fact, that at the very moment when his plans were producing their natural fruit, Major Macpherson was removed from his appointment on the one-sided representation of a Brigadier John Campbell, of the Madras army, by the President of the Council, Sir Herbert Maddock, and placed, as it were, on his trial. The enquiry that followed, conducted by Mr., now Sir J. P. Grant, terminated in the full and complete acquittal of Major Macpherson. On its conclusion, Lord Dalhousie sent for him; 'and after saying he was sensible that nothing could ever 'compensate for the treatment which he had undergone, assured 'him, on behalf of every member of the Government, that to 'mark their undiminished confidence in him, he should be 'appointed to a suitable office in the political department, as 'soon as his health, (then entirely broken, and requiring his 'immediate return to Europe) would enable him to accept it.' Mr. Macpherson adds:—'It would have been unnecessary to 'dwell upon these events, but for the conduct of General 'Campbell, who thought fit, in the year succeeding Major 'Macpherson's death, to re-produce these accusations, and to 'assert their truth, without even alluding to the enquiry or its 'results; as these charges in no way concerned General 'Campbell or his services, their gratuitous revival by him so 'many years after the Government had pronounced an honour-'able acquittal, and so immediately after Major Macpherson 'had been removed by death, bespeaks a feeling which is rare, 'indeed, among British officers.'

But to the living generation, the most interesting part of the book is that, in which the story is told of the manner in which Major Macpherson, from the fort in Agra, directed the movements of Scindia during the mutiny. We have not space to give it entire, and any abridgement would spoil it. It forms an episode which must be consulted by the historian of the outbreak. To Dinkur Rao, the illustrious Dewan of the

Maharaja, Major Macpherson is always just. He constantly speaks of him as 'a man of rare genius and noble mind,' and admits that 'to him everything was due.' Nor does he paint in too dark colours the wayward and too facile character of the Maharaja. Subsequent events have fully proved that he was judged with great accuracy and discernment, in 1859-60, by both the Dewan and the Agent.

We regret that we are unable to give longer extracts from this interesting narrative. Further opportunities will doubtless, however, be afforded of reviewing the work at greater length in connection with others of a similar character.

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6. *Narrative of an expedition to the Zambesi and its tributaries, and of the discovery of the Lakes Shirva and Nyassa from* 1858 *to* 1864. *By David and Charles Livingstone, with Map and Illustrations.* London, John Murray, Albemarle Street, 1865.

THE recent adventures of Captains Speke and Grant have drawn the attention of Indian officers in a special degree to stories of African adventure. No apology, therefore, is needed for drawing their attention to this most entertaining volume. Dr. Livingstone, indeed, enjoys an advantage which was denied to the two Indian travellers, for, with powers of observation at least equal to theirs, he is a pleasant and graceful writer. One never wearies over pages in which the descriptive is blended so naturally with the information that enlightens, and with the knowledge which instructs. A higher purpose than mere love of adventure and discovery seems too to have animated all Dr. Livingstone's efforts. 'It has been my object in this work,' he tells us in the preface, 'to give as clear an account as I was 'able of the tracts of country previously unexplored, with their 'river systems, natural productions and capabilities, and to 'bring before my countrymen, and all others interested in the 'cause of humanity, the misery entailed by the slave-trade in 'its inland phases; a subject, on which I and my companions 'are the first who have had any opportunities of forming a 'judgment.' In this miserable traffic, the Portuguese are the greatest offenders, and with such barbarity is it managed, that not more than one in every five of the captured slaves reaches his destination alive. To the noble efforts of England, encouraged and supported by the ministries of all parties, to put a stop to this traffic, Dr. Livingstone does full justice. Hitherto, however, the claims of Portugal to paramount sovereignty over a great portion of the seaboard of Africa, though absurd in themselves, have been admitted by our Government, and this admission has militated much against the success of our efforts.

The triumph of the North in the civil war in America, and the removal of the shackles from the slave in the South, have however, already borne good fruit; the young King of Portual, having introduced a law for the abolition of slavery in his dominions, and the Spanish Cortes having likewise decreed its extinction in the island of Cuba.

Incorporated with Dr. Livingstone's account of the expedition, is the journal of Mr. Charles Livingstone, full of fresh and keen observation. Dr. Livingstone was rightly of opinion, that the strange scenes they encountered would be more vividly described by one who met them for the first time, than by an old traveller such as himself. 'It is,' he says, 'by the little acts and words of every day life, that character is truly and best known.' His conversation with the natives, recorded at the moment by Mr. C. Livingstone, are thus full of their original freshness, and enable the ordinary reader to form an opinion of them, almost as trustworthy as that of the travellers themselves. The results obtained in this expedition are more solid than shining. The capabilities of the Zambezi as a means of transit to the fertile highlands of the interior, were placed beyond a doubt. The fertility of the soil was proved by its production of indigo and cotton,—the latter of a very superior quality, and capable of being advantageously cultivated to any extent. Tobacco and the castor oil plant were often found self-growing, and sugarcane, though not a self-planter, 'blossoms, and when cultivated in rich 'loams, grows without manure, as large as that which can only be 'reared by the help of guano in the Mauritius and Bourbon.'

The fertility of the highlands appears to be wonderful. Here, we learn, 'the natural grasses are less luxuriant, but the average crop is as heavy as could be obtained from rich meadow-land in England. This self-grown pasturage, which extends over hundreds of miles of grassy valley and open woodland, is, the best in Africa. This was shewn by the cattle, which were left almost in a wild state, becoming so fat and lazy, that bulls allowed the boys to play with them and to jump on their backs. We have seen cows feeding on grass alone become as heavy as prize beasts.'

Yet the bright hopefulness caused by this and other proofs of the fertility of the soil of Africa, and by the temperate nature of the climate in the highlands, appears to have been clouded by the sight of the miseries caused by the iniquitous slave-trade. 'We have,' writes Dr. Livingstone, 'the system nearest that of 'justice, indeed the only one that approaches it, when the 'criminal is sold for his crimes. Then, on the plea of witch-'craft, the child taken from the poorer classes of parents as a

'fine, or to pay a debt, or sold to a travelling native slave-dealer. 'Then, children kidnapped by a single robber, or by a gang 'going from their own village to neighbouring hamlets, to 'steal the children who are out drawing water, or gathering 'wood. We have seen places where every house was a stockade, 'and yet, the people were not safe.' Then, after a few other modes employed, he comes to the final, and to the Europeans, the most degrading of all. 'Trading parties are sent out from 'Portuguese and Arab coast towns, with large quantities of 'muskets, ammunition, cloth and beads. The two last articles are 'used for paying their way during the earlier part of the journey 'from the coast, and for the purchase of ivory. From a great 'number of the cases we have examined, these slaving parties seem 'to preserve the mercantile character for a large portion of the 'trip. They usually settle down with some chieftain, and cul-'vate the soil: but we know of no instance in which they have 'not, at one part of their journey, joined one tribe in attacking 'another, for the sake of the captives they would take. This is 'so frequent an occurrence, that the system causes a frightful 'loss of life.'

We would quote, had we time, Dr. Livingstone's admirable remarks, in which, we need not say, we concur, expressive of his disbelief in the incapacity of the African, in either mind or heart. Those generous words commend themselves to the consideration of all men, more especially of those who pride themselves on the superiority of race in this country. If good works are the test of faith, then, as surely, are good deeds the only test of the real superiority of man. This is a fact which no one who is unprejudiced can deny, and the appreciation of which is becoming daily more widely spread in the world. There could be no more fitting conclusion to this record of African travel, than this noble endeavour to strike a blow for the emancipation of the long oppressed race which cultivates Africa's soil.